

SEALED BIDDING

| TEXT | REFERENCE |
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FEDERAL ACQUISITION INSTITUTE

CURRICULUM OF PROCUREMENT
TRAINING COURSES

CURRENT THROUGH
FAC-20

OFFICE OF ACQUISITION POLICY

GSA TRAINING CENTER

TABLE OF CONTENTS

PART I - DESK REFERENCE

| | PAGE |
|---|----------------|
| CHAPTER 1. PROCUREMENT PLANNING REVIEW | 1-1 |
| 1.1 Concept of Sealed Bidding | 1-3 |
| 1.2 Steps in Procurement Planning | 1-5 |
| 1.3 Review of Selected Key Procurement Planning Concepts | 1-8 |
| 1.3.1 Purchase Requests | 1-8 |
| 1.3.2 Specifications | 1-9 |
| 1.3.3 Locating Sources of Supply or Service | 1-10 |
| 1.3.4 Acquisition Planning | 1-10 |
| 1.4 Conditions that Require Use of Sealed Bidding | 1-12 |
| CHAPTER 2. THE SOLICITATION | 2-1 |
| 2.1 Establish Bid Opening Dates and Times | 2-5 |
| 2.2 Select Contract Type | 2-5 |
| 2.2.1 Firm-Fixed Price Contract | 2-6 |
| 2.2.2 Fixed Price with Economic Price Adjustment (FP-EPA) | 2-7 |
| 2.2.3 Firm-Fixed Price Indefinite-Delivery (FFP-ID) | 2-8 |
| 2.3 Uniform Contract Format (UCF) | 2-14 |
| 2.3.1 Determine Whether the UCF is Required | 2-16 |
| 2.4 Prepare the IFB Using the UCF | 2-16 |
| 2.4.1 Part I - The Schedule | 2-16 |
| 2.4.2 Part II - Contract Clauses | 2-26 |
| 2.4.3 Part III - List of Documents, Exhibits, and Other Attachments | 2-28 |
| 2.4.4 Part IV - Representations and Instructions | 2-28 |
| 2.4.5 Select Contract Clauses and Solicitations | 2-32 |
| 2.4.6 Simplified Contract Format | 2-39 |
| 2.5 Obtain Approvals | 2-43 |

| | |
|---|---------|
| CHAPTER 3. PUBLICIZING | 3-1 |
| 3.1 Determining the Need to Synopsize | 3-5 |
| 3.1.1 Exceptions to Synopsizing | 3-6 |
| 3.1.2 Prepare the Synopsis | 3-7 |
| 3.1.3 Forward the Synopsis | 3-16 |
| 3.1.4 Publicizing the Requirements By Other Methods | 3-20 |
| 3.1.5 Make the Solicitation Available to Interested Parties | 3-22 |
| 3.2 Respond to Preaward Inquiries | 3-27 |
| 3.2.1 Identify Who May Answer the Inquiries and What They May Say | 3-27 |
| 3.2.2 Identify Information That May Not Be Divulged | 3-29 |
| 3.2.3 Respond to Inquiries Received | 3-31 |
| 3.2.4 Review the Inquiry and Conduct Necessary Factfinding | 3-31 |
| 3.2.5 Provide a Follow-up Response | 3-32 |
| 3.2.6 Document the File | 3-32 |
| CHAPTER 4. AMENDING AND CANCELLING IFBs | 4-1 |
| 4.1 Determine Whether to Amend or Cancel the IFB | 4-5 |
| 4.1.1 Potential Problems with Issued IFBs | 4-6 |
| 4.1.2 Pre-bid Conferences | 4-6 |
| 4.1.3 Problems Discovered “In-House” or Changed Requirements | 4-8 |
| 4.2 Amend the IFB | 4-8 |
| 4.2.1 Postpone the Bid Opening Date | 4-8 |
| 4.2.2 Prepare Amendment (SF 30) | 4-9 |
| 4.2.3 Issue Amendment | 4-9 |
| 4.3 Determine Whether or Not to Cancel IFB Before Bid Opening | 4-16 |
| 4.3.1 Prepare Notice of Cancellation | 4-16 |
| 4.3.2 Send Notice to Bidder, Return Bids, and Synopsize the Cancellation | 4-17 |
| 4.3.3 Record Cancellation of IFB (Document the File) | 4-17 |
| 4.4 Identify Compelling Reason to Cancel IFB After Bid Opening | 4-18 |
| 4.4.1 Determine Whether to Complete the Acquisition Through Negotiations and Obtain Approval | 4-22 |
| 4.4.2 Prepare and Distribute the Notice of Cancellation | 4-24 |
| 4.4.3 Record Cancellation of IFB (Document the File) | 4-24 |

| | |
|---|----------------|
| CHAPTER 5. PROCESSING BIDS | 5-1 |
| 5.1 Receive, Secure, and Control Bids | 5-7 |
| 5.1.1 Secure Bids | 5-7 |
| 5.1.2 Facsimile and Telegraphic Bids | 5-8 |
| 5.1.3 Modifications or Withdrawals of Bids | 5-9 |
| 5.2 Open and Abstract Bids | 5-10 |
| 5.2.1 Postpone Bid Opening After the Date and Time Set | 5-10 |
| 5.2.2 Conducting the Bid Opening | 5-10 |
| 5.2.3 Abstracting Bids | 5-12 |
| 5.2.4 Classified Bid Opening | 5-13 |
| 5.3 Request Time Extensions | 5-15 |
| 5.3.1 Firm-Bid Rule | 5-15 |
| 5.3.2 Obtain Time Extensions | 5-17 |
| 5.4 Resolve Late Bids | 5-17 |
| 5.5 Determine Bid Responsiveness | 5-19 |
| 5.5.1 Examples of Nonresponsive Bids | 5-20 |
| 5.5.2 Resolve Minor Informalities and Irregularities | 5-21 |
| 5.5.3 Reject Nonresponsive Bids | 5-22 |
| 5.6 Evaluate Bid Prices | 5-24 |
| 5.6.1 Identify Price-Related Factors in the Bids | 5-24 |
| 5.6.2 Determine the Evaluated Price of Each Bid | 5-36 |
| 5.6.3 Perform Price Analysis | 5-40 |
| 5.6.4 Accounting for Differences Between the Expected Price and the Lowest Price Bid | 5-44 |
| 5.6.5 Equally Low Bids | 5-46 |
| CHAPTER 6. MISTAKES IN BIDS | 6-1 |
| 6.1 Preaward Mistakes in Bids | 6-5 |
| 6.1.1 Identify Possible Mistakes in Bids | 6-5 |
| 6.1.2 Request Verification of Bids with Suspected Mistakes | 6-6 |
| 6.1.3 Correct Clerical Mistakes in the Bid | 6-8 |
| 6.1.4 Respond to Allegations If Bidder Alleges a Non-Clerical Mistake | 6-9 |
| 6.1.5 Verify the Alleged Mistake | 6-9 |
| 6.1.6 Recommend Correcting the Mistake or Allowing Withdrawal of the Bid | 6-9 |

| | | |
|-------|--|------|
| 6.2 | Postaward Mistakes in Bids | 6-15 |
| 6.2.1 | Recognize and Correct Mutual Mistakes That Are in the Government's Favor | 6-15 |
| 6.2.2 | Request Evidence of the Mistake | 6-16 |
| 6.2.3 | Verify the Mistake | 6-16 |
| 6.2.4 | Rescind or Reform the Contract | 6-17 |
| 6.2.5 | Prepare Case File and Obtain Legal Clearance | 6-18 |

CHAPTER 7. RESPONSIBILITY 7-1

| | | |
|-------|---|------|
| 7.1 | Review Lists of Excluded Parties | 7-5 |
| 7.2 | Identify Data that Bear on Responsibility | 7-7 |
| 7.2.1 | The Necessity For Adequate Data | 7-7 |
| 7.2.2 | Sources of Data | 7-7 |
| 7.3 | Determine Responsibility | 7-8 |
| 7.3.1 | Qualified and Eligible Bidders | 7-9 |
| 7.3.2 | Applying Other General Standards | 7-13 |
| 7.3.3 | Applying Special Standards | 7-16 |
| 7.3.4 | Determining Subcontractor Responsibility | 7-17 |
| 7.4 | Request a Preaward Survey | 7-18 |
| 7.4.1 | Preparing a Request for Preaward Survey | 7-19 |
| 7.4.2 | Standard Form 1403 (Preaward Survey) | 7-21 |
| 7.4.3 | Review of Survey Report | 7-26 |
| 7.5 | Determine the Responsibility of Small Business Concerns | 7-26 |
| 7.5.1 | Procedures for Issuing a COC | 7-26 |
| 7.5.2 | Awarding the Contract After the COC Process Has Begun | 7-30 |
| 7.6 | Obtaining Preaward EEO Clearance from Department of Labor | 7-30 |
| 7.7 | Summary on Responsibility | 7-32 |

| | |
|---|---------|
| CHAPTER 8. AWARD OF CONTRACT | 8-1 |
| 8.1 Sufficiency of Funding for Award | 8-6 |
| 8.1.1 Insufficient Funds | 8-7 |
| 8.2 Recommend Bidder for Award | 8-7 |
| 8.2.1 Subcontracting Plans | 8-8 |
| 8.2.2 Recommendation Rejected | 8-10 |
| 8.2.3 Recommendation Accepted | 8-10 |
| 8.3 Prepare the Contract | 8-10 |
| 8.3.1 Multiple Awards | 8-11 |
| 8.3.2 Preparation and Execution | 8-11 |
| 8.4 Document the Award | 8-16 |
| 8.4.1 Contract File Documentation | 8-16 |
| 8.5 Obtain Approvals and Execute the Award | 8-21 |
| 8.5.1 Legal Review | 8-21 |
| 8.5.2 Execute the Award | 8-22 |
| 8.6 Issue Notification of Award | 8-22 |
| 8.6.1 Contract Distribution | 8-22 |
| 8.6.2 Post-Award Notifications | 8-23 |
| 8.6.3 Synopses of Contract Awards Likely to Result in Subcontracts | 8-24 |
| 8.6.4 FPDS Input | 8-24 |
| CHAPTER 9. PROTESTS | 9-1 |
| 9.1 Protests Files with the Agency | 9-8 |
| 9.1.1 Respond to Verbal or Written Complaints | 9-8 |
| 9.1.2 Prepare Findings of Fact | 9-10 |
| 9.1.3 Recommend Whether to Continue Contract Action or Performance | 9-11 |
| 9.1.4 Recommend Resolution of Protest | 9-14 |
| 9.1.5 Select Course of Action | 9-14 |
| 9.1.6 Respond to Protest | 9-16 |
| 9.2 Protesting a Small Business Representation | 9-18 |
| 9.2.1 Notify Parties of Proposed Awardee | 9-18 |
| 9.2.2 Forward Protests or CO Concerns About an Offeror's Eligibility to SBA | 9-18 |
| 9.2.3 Determine Whether to Award Immediately | 9-19 |
| 9.2.4 Implement SBA's Determination | 9-20 |

| | | |
|-------|--|------|
| 9.3 | Protests Concerning the Walsh-Healey Public Contracts Act | 9-22 |
| 9.3.1 | Notify Offeror That Its Eligibility Has Been Questioned | 9-22 |
| 9.3.2 | Determine the Offeror's Eligibility | 9-23 |
| 9.3.3 | Forward the Determination to SBA | 9-23 |
| 9.3.4 | Forward the Protest to DOL | 9-24 |
| 9.3.5 | Determine Whether to Award Immediately | 9-24 |
| 9.3.6 | Implement SBA's or DOL's Determination | 9-24 |
| 9.4 | Protests to GAO | 9-26 |
| 9.4.1 | Notify Offerors (Preaward) or Contractor (Post-award) | 9-27 |
| 9.4.2 | Prepare Findings of Fact | 9-27 |
| 9.4.3 | Respond to Requests for Written Documents | 9-28 |
| 9.4.4 | Recommend Whether or Not to Continue the Contract Action or Performance | 9-28 |
| 9.4.5 | Prepare and Forward a Report to GAO | 9-30 |
| 9.4.6 | Participate in Conferences Scheduled By GAO | 9-32 |
| 9.4.7 | Determine Whether to Accept or Appeal the GAO Recommendation | 9-32 |
| 9.5 | Protests to the GSBCA and to the Courts | 9-33 |
| 9.5.1 | Protests to the General Services Board of Contract Appeals (GSBCA) | 9-33 |
| 9.5.2 | Legal Remedies | 9-33 |

| | |
|--|-------------|
| APPENDIX A—CONTRACT CLAUSE EXAMPLES | AA-1 |
|--|-------------|

| | |
|---|-------------|
| APPENDIX B—TWO-STEP SEALED BIDDING | AB-1 |
|---|-------------|

| | |
|----------------------------|-------------|
| APPENDIX C—GLOSSARY | AC-1 |
|----------------------------|-------------|

| | |
|--------------------------------|-------------|
| APPENDIX D—ACRONYM LIST | AD-1 |
|--------------------------------|-------------|

| | |
|--|-------------|
| APPENDIX E—INDEX OF COURSE TOPICS | AE-1 |
|--|-------------|

PART II - CLASSROOM MATERIALS

PREFACE

Textbook Organization

Except for Chapter 1, the chapters in this textbook are organized as follows:

- Brief vignette introduces chapter topic to students and provides a motivator to read on. This vignette and any reference to the vignette are in italics. Nowhere else in the book will italics be used, unless referring to the vignette.
- Learning objectives for each specific chapter are outlined. This is what the student is expected to learn in each chapter.
- Chapter introduction introduces and defines a few key terms, any issues, and the purpose relating to the specific chapter. In addition, there is an explanation of how the chapter is organized.
- Flowchart of steps in performance is included. It is a pictorial description of the step-by-step process for each specific chapter. Each box or diamond of the flowchart contains a Section # that corresponds to a specific chapter section heading.
- Steps in performance start the actual material and are separated by sections and subsection numbers (e.g., 3.1, 3.2, and 3.2.1) The first number of each section or subsection always corresponds to the chapter number (e.g., 3.1 is the first section in Chapter 3).

CHAPTER 1

PROCUREMENT PLANNING REVIEW

THE CASE OF THE WALKIE-TALKIES

The Government has been buying “Walkie-Talkies” from Action Company for the past four years. There is a current need to purchase an additional 1,215 units. Action Company’s radios have excellent distance capabilities, the moisture proofing is far superior to others on the market, and the maintenance required on the sets is minimal. However, it has been noted, based on a recent market survey, that a number of other companies have improved the manufacturing of their walkie-talkies and Action Company is no longer the only contractor selling state-of-the-art walkie-talkies. This product is not listed on the GSA schedule.

The procurement history of this product is as follows:

| | <u>Quantity</u> | <u>Unit Price</u> |
|-----------------------|-------------------------------------|-------------------|
| <i>1st Buy - 1980</i> | <i>1,360 units</i> | <i>\$137.50</i> |
| <i>2nd Buy - 1982</i> | <i>1,412 units</i> | <i>\$129.60</i> |
| <i>3rd Buy - 1984</i> | <i>1,736 units</i> | <i>\$105.10</i> |
| <i>4th Buy - 1987</i> | <i>1,392 units</i> | <i>\$ 76.00</i> |
| <i>This Buy</i> | <i>1,215 units (Gov’t estimate)</i> | <i>\$ 62.00</i> |

*The CO has considered this information and determined that using a **sealed bidding** approach to buying the walkie-talkies will benefit the Government.*

What are the factors in this case that caused the CO to consider a sealed bidding approach? Could you prepare a solicitation with the information provided? If not, what additional information would you need? How or from whom would you get it?

CHAPTER INTRODUCTION

Procurement Planning Course

Before preparing a solicitation, one must plan for a procurement. The many steps or considerations in the procurement planning process have been discussed in considerable detail in the Procurement Planning course of this curriculum. It is not required (but highly recommended) that you take the Procurement Planning and the Federal Acquisition Process courses before the Sealed Bidding course. At the very least, you should have a good background knowledge of procurement planning. This chapter will refresh your memory on issues in procurement planning, including: purchase requests, specifications, and source lists.

1.1 CONCEPT OF SEALED BIDDING

Early in its history, Congress realized the need for a way to discourage abuses in Government acquisition through a **structured, competitive system that would be open to public scrutiny**. The sealed bidding method of procurement evolved as the answer to the congressional demand.

The steps in sealed bidding include:

1. Prepare invitation for bids (IFBs) that describe the requirements clearly, accurately, and completely.
2. Publicize the IFBs in sufficient time to enable preparation and submittal of competitive bids.
3. Notify all interested parties of any changes to the requirement.
4. Open submitted sealed bids publicly at a predetermined date and time.
5. Evaluate bids without discussion.
6. Select the responsible bidder whose bid conforms to the requirements based on price and price-related factors only (i.e., the low bid).

This approach permits a valuable check and balance of the Government actions against abuses through formal protest procedures.

PROCUREMENT PLANNING REVIEW

NOTES

1.2 STEPS IN PROCUREMENT PLANNING

When a contracting office receives a purchase request from a requirements unit in a Government agency, it is generally assigned to a contracting officer (CO) or a contract specialist such as yourself. In some contracting activities, procurement planning has been done for known requirements for up to a year in advance. In that situation, the purchase request was prepared to suit the method of contracting required (i.e., Sealed Bidding, Negotiation, Two-Step Sealed Bidding, Small Purchases). In any event, it is necessary to make an assessment of certain kinds of information in order to decide the most appropriate method of contracting to use for a particular acquisition.

The chart on the next two pages illustrates the steps that a contract specialist must consider in order to decide the most appropriate method of contracting, and specifically, the impact on sealed bidding. The purpose of this course is to teach you how to make a purchase when the purchase is to be made using sealed bidding procedures.

PROCUREMENT PLANNING REVIEW

| STEPS IN PROCUREMENT PLANNING | | |
|--|---|---|
| Step | Outcome(s) | Impact On Sealed Bidding |
| 1. Review Purchase Requests (PRs). | <ul style="list-style-type: none"> Accepts the PR or returns the PR to the requiring activity. Requests additional information from the requiring activity where necessary to complete the PR. | Procurement cannot proceed until required data and signatures are obtained. |
| 2. Review funds available for the procurement. | <ul style="list-style-type: none"> Determines if funds are available to commit the Government on a contractual action. | The procurement process may proceed only if the right type of funds have been obligated, the amount of funding is sufficient to cover the Independent Government cost estimate, and the funds will not expire before the contract can be awarded. |
| 3. Conduct market research. | <ul style="list-style-type: none"> Obtains data from acquisition histories and other in-house sources. As necessary, collects and compiles additional market data. | This step provides the raw data to make and support all subsequent decisions in the procurement planning phase—including the decision on method of procurement—and in soliciting and evaluating bids. |
| 4. Plan the procurement. | <ul style="list-style-type: none"> Determines whether a plan is necessary. Updates or prepares a procurement plan. | Such plans typically include milestones for issuing and awarding the contract. |
| 5. Review the Specification or Purchase Description. | <p>Critiques the proposed specification or purchase description and recommends any necessary changes.</p> | <ul style="list-style-type: none"> Sealed bidding may be used only when the specification or purchase description can be worded with sufficient precision and accuracy to award without discussions. The specification or purchase description is the basis for Part I of the IFB. Poorly crafted specifications can force the Government to amend or cancel the IFB, pay unnecessarily high prices, and the like. |
| 6. Identify requests for services. | <ul style="list-style-type: none"> Screens out unauthorized requests for personal services. Screens out unauthorized or improper requests for advisory and assistance services. For work covered by the Service Contract Act, identifies required skill classifications and prepares requests for wage determinations. Selects the required source or develops a source list. | The type of service being procured impacts clause selection for Part II of the IFB. |
| 7. Identify sources. | Selects the required source or develops a source list. | If there is a required source, you will order against that source rather than soliciting sealed bids from the open market. |

| Step | Outcome(s) | Impact on Sealed Bidding |
|---|--|--|
| 8. Analyze the ability of small business and/or labor surplus sources to meet the need. | <ul style="list-style-type: none"> • Determines whether to procure from an 8(a) firm. • Determines whether a set aside is required for the procurement. • Identifies the type of set aside (if any). | If the decision is to go 8(a), the procurement becomes a sole source negotiation. A decision to set aside, in part or in whole, impacts clause selection for Part II of the IFB. It also has ramifications for determining the responsibility of the bidder. |
| 9. Review proposed technical evaluation factors. | <ul style="list-style-type: none"> • Determines if technical/business management evaluation factors are required. • Critiques proposed technical/business management evaluation factors and recommend changes to the requiring activity. | If technical and business management evaluation factors are required (i.e., award cannot be made only on price and price related factors), sealed bidding cannot be used. |
| 10. Prepare source selection plans. | <ul style="list-style-type: none"> • Determines potential for awarding more than one contract. • Identifies factors for evaluating price and the formula for applying the factors. • Determines the overall evaluation weight of technical/business management evaluation factors (when the selection will not be solely on price and price-related factors). | Price-related factors will be reflected in Section M, Part III of the IFB and be applied in determining the lowest price bid and the number of awards to make. |
| 11. Establish the extent of competition. | <ul style="list-style-type: none"> • Determines whether full and open competition after the exclusion of sources is permitted. • Determines whether other than full and open competition is permitted. | If there is only one known and responsible source, sealed bidding cannot be used. Moreover, when urgency is the basis for limiting competition, there is generally not sufficient lead-time for sealed bidding. |
| 12. Select the method of procurement. | <p>Chooses one of the following:</p> <ul style="list-style-type: none"> • A small purchase procedure. • Sealed bidding. • Two-step sealed bidding. • Negotiations. | If the decision is sealed bidding or two step sealed bidding, this is the textbook to read. |
| 13. Analyze lease vs. purchase alternatives. | <p>Chooses to solicit one of the following:</p> <ul style="list-style-type: none"> • Lease. • Purchase. • Both (the Government reserving the right to lease or purchase based on offers received). | This decision also impacts Section M, Part III of the IFB. |

PROCUREMENT PLANNING REVIEW

1.3 REVIEW OF SELECTED KEY PROCUREMENT PLANNING CONCEPTS

Purchase requests, specifications, source lists, and acquisition planning are the major aspects of the pre-solicitation phase and are discussed below.

1.3.1 Purchase Requests

The starting point in the procurement process is the **purchase request**. In it the requirer tells you, the contract specialist, what the requirer wants bought. One of your most important functions is to advise and assist the requiring activities to formulate purchase requests.

In the sealed bidding method of procurement, the IFB is the procurement document used to solicit sealed bids. It is drafted by a Government agency for the purpose of soliciting bids for the purchase of supplies or services (or construction services, which will be covered in a separate course). There are other documents (e.g., RFPs, RFQs, etc.) that are used in negotiated procurements. For the sealed bidding course we are only concerned with IFBs.

Section B of the IFB must include a description of the supplies and services required. You, as the contract specialist, obtain that information from the purchase request. Therefore, it is extremely important that you review the purchase request to ensure that the essential information for Section B of the IFB is included. (Of course, there is other equally important information that must be included in the purchase request in order for you to adequately plan for the solicitation of offers and the award of a contract.)

The following information, as a minimum, should generally be included in the purchase request:

- Funding Citation
- Requirement (items or services to be acquired)
- Quantity
- Independent Cost Estimate
- Packing and Marking Instructions
- Inspection and Acceptance Requirements
- Delivery/Shipment Requirements
- Evaluation Factor for Award (when appropriate)
- Suggested Sources
- Special Requirements (Warranties, Options, etc.)

1.3.2 Specifications

FAR 10.001

In sealed bidding, it is important to have precise and accurate **specifications**. Specifications are defined as:

“A description of the technical requirements for a material, product, or service that includes the criteria for determining whether the requirements are met.”

Specifications should state only the Government’s actual minimum needs. They should be designed to promote full and open competition, with due regard to the nature of the supplies or services to be acquired.

In addition to detailed specifications that are often used in sealed bidding, there are commercial item descriptions (CID) which are generally written for items that are not as complex as items for which specifications are written. A CID may be a brief, simple description of a commercial-type product.

PROCUREMENT PLANNING REVIEW

1.3.3 Locating Sources of Supply or Service

FAR Part 6

All IFBs are issued so as to obtain full and open competition (FAOC). The term FAOC means that all responsible sources are permitted to compete. Developing a solicitation mailing list is a critical activity with respect to obtaining sources of supply or service. Contracting activities establish lists for each of the major categories of goods and services that the activity purchases on a regular basis. A company should be included on an agency's solicitation mailing list if:

- The agency considers the company to be capable of filling the requirements of a particular acquisition, and
- The company is an eligible and qualified source that has submitted a Solicitation Mailing List Application (SF 129).

1.3.4 Acquisition Planning

FAR Part 7

After receiving an acceptable purchase request and prior to the development of the solicitation, document all key decisions and milestones that have an impact on the procurement. Generally, acquisition planning is done for purchases that exceed the small purchase threshold. On routine repetitive procurements little or no planning may be required. A first-time procurement, however, requires extensive analysis of acquisition histories and market research resulting in documentation of greater detail. The extent of your documentation, therefore, is commensurate with the complexity of the procurement. You should address the following issues:

- Key Decisions
 - type of specification
 - evaluation criteria
 - source selection plan
 - sources to be solicited
 - justification for restricted competition
 - set aside considerations
 - method of procurement and solicitation
 - lease vs purchase (if applicable)
 - type of contract
 - government-furnished property and/or data
 - other key business terms and conditions
 - contract administration plan
 - other issues unique to this procurement

- Milestones
 - requiring activity milestones
 - procurement milestones
- Assignment of Responsibilities
 - to requiring activity personnel
 - to purchasing staff
- Approvals
 - contracting officer
 - requiring activity
 - legal, technical, finance, shipping, etc.

Acquisition planning is very important for the following reasons:

- Provides sufficient lead time to obtain adequate competition and meet the Government's needs.
- Avoids delays due to omissions/errors made in the development of the solicitation and resultant contract.
- Identifies the steps necessary to ensure timely delivery from the most economical source.

1.4 CONDITIONS THAT REQUIRE THE USE OF SEALED BIDDING

FAR 6.102

Both sealed bidding and competitive proposals (negotiation) are acceptable methods of procurement. A combination of those procedures is permitted when it is appropriate to do so. COs select the sealed bidding method of procurement when, in their judgement, all four conditions in Exhibit 1-1 are met. This is a critical CO decision, and a wrong decision can be very costly to the Government.

FOUR CONDITIONS FOR SOLICITING SEALED BIDS

FAR 6.401

- Time permits the solicitation, submission, and evaluation of sealed bids;
- The award will be made on the basis of price and other price-related factors;
- It is not necessary to conduct discussions with the responding bidders about their bids; and
- There is a reasonable expectation of receiving more than one bid.

Exhibit 1-1. Four Conditions for Soliciting Sealed Bids.

The conditions listed in Exhibit 1-1 are explained in greater detail below:

| <u>Requirement</u> | <u>Explanation</u> |
|---|---|
| 1. Adequate time for solicitation, submission, and evaluation of sealed bids | The procedures required to carry out sealed bidding require a sufficient time period. This is not to say that sealed bidding necessarily takes more time than negotiation. In fact, many negotiated contracts require a much longer lead time than do acquisitions using sealed bidding procedures. However, in urgent circumstances negotiation procedures can be carried out in a shorter period than the minimum required to carry out a sealed bidding acquisition. |
| 2. Award can be based on price and price-related factors | Under normal conditions, a sealed bid acquisition is awarded to the responsible bidder who submits the lowest responsive bid. In effect, the marketplace determines the source selection decision. Therefore, if considerations other than price are critical to the source selection decision, sealed bidding would not be a feasible method of conducting the competition. |
| 3. No need for discussions | This is perhaps the most difficult to fulfill. As a practical matter, a precise description of the work to be acquired is essential if sealed bidding procedures are to be used because all bidders must be bidding on the same, or essentially the same, item. In the absence of a precise and accurate description; it may be impossible for bidders to accurately prepare bids or for the CO to evaluate them on a common basis. |
| 4. Adequate competition is expected (more than one sealed bid is expected to be received) | It would be useless to publicize a contract requirement and request competitors to bid if the CO knows that there would be no competition in the open market for the requirement. At a minimum, competition requires at least two capable sources to compete for the award. Furthermore, the nature of the work, the relationship among the potential producers, and the current status of their businesses must be examined to determine that a competitive environment really exists. To be effective, competition must be adequate to ensure that the Government acquires goods and services at reasonable prices. |

PROCUREMENT PLANNING REVIEW

Revisiting the Chapter Vignette

To answer the vignette questions on the first page of this chapter, you need to consider the four requirements for the use of sealed bidding. This will answer the first question—"What are the factors in this case that caused the CO to consider a sealed bidding approach?"

- *Adequate time—It is implied that there will be adequate time to solicit bids for these walkie-talkies. Urgency is not a factor.*
- *Award on price and price-related factors—These walkie-talkies have been purchased from Action Company for the past four years. It is implied that they have standard specifications and award can be based simply on price and price-related factors.*
- *No need for discussions—The case implies that the specifications are known and complete, thus there is no need for discussions.*
- *Adequate competition—The case states that there are several companies manufacturing these high-quality walkie-talkies.*

Other reasons for using sealed bidding versus an alternate method of procurement can be determined by a process of elimination:

- *Small purchase procedures are not applicable because the total dollar value is over \$25,000.*
- *Negotiation or two-step sealed bidding procedures do not apply because the acquisition history implies that the specifications are known and complete.*

Lastly, these walkie-talkies cannot be bought on the GSA schedule, thus sealed bidding is the most logical method of procurement.

NOTE TO STUDENTS:

This brief overview showed you how procurement planning is used to determine the appropriate method of procurement. By knowing what is to be acquired, the availability of sources (potential competition), and certain other information contained in the purchase request, you can make a decision as to the most appropriate method of contracting. The remainder of this textbook will go into great detail on how sealed bidding is done. The aim of the course is to train you to purchase supplies and services using the sealed bidding method of procurement.

CHAPTER 2

THE SOLICITATION

DRAFTING AN IFB

You, a contract specialist, received a purchase request for 465,120 pounds of aircraft, high-temperature grease. The CO determined that sealed bidding will be the method of procurement because the specifications are well-defined and no discussions with bidders are likely to be needed, adequate competition is likely to occur, award will be based on price, and there is plenty of time to issue an IFB. You begin looking through the Federal Acquisition Regulation (FAR) and quickly see that drafting an IFB requires close analysis of FAR, your agency supplement to the FAR, and the use of a wide variety of solicitation provisions and contract clauses.

Where do you begin?

Normally, at each contract activity in Government agencies, there is a senior contract specialist who prepares standard IFB packages that are used by the group. These packages will vary, to some extent, depending on whether you are buying supplies, services, construction or other special items.

In this chapter you will learn how an IFB is drafted.

THE SOLICITATION

LEARNING OBJECTIVES

At the completion of this course, you will be able to:

Overall: Prepare an invitation for bids and select the contract type

Individual:

1. Prepare an invitation for bids (IFB)
 - Determine whether the Uniform Contract Format is required.
 - Establish opening dates and times for a solicitation.
 - Use the Uniform Contract Format in developing a solicitation.
 - State the steps required when you deviate from a FAR clause.
2. Select contract types
 - Select Firm-Fixed Price, Definite Quantity & Definite Delivery (FFP).
 - Select Fixed Price with Economic Price Adjustment (FP-EPA).
 - Select Fixed Price Indefinite-Delivery Contract (FP-ID).

Exhibit 2-1. Learning Objectives for Chapter 2.

CHAPTER INTRODUCTION

What is an IFB?

In this chapter, you will learn how an IFB is prepared. An IFB is a procurement document, drafted by a Government agency, that contains a description of what the Government wants to buy and all the solicitation provisions and contract clauses that will govern the contract when it is awarded. An IFB contains all the data needed for the CO to award the contract without discussions with bidders. This is in direct contrast to two other procurement documents: the Request for Proposals (RFP) and the Request for Quotations (RFQ).

What are RFPs and RFQs?

The RFP and RFQ are solicitations that are used in negotiation, which is a different method of procurement from sealed bidding. In negotiation, there may be extensive discussions with offerors and the CO may change the requirements for what he/she is buying based on the discussions with offerors. The CO in negotiation may award a contract to other than the low offeror, if the RFP states that this is a possibility.

Purpose of the IFB

The purpose of the IFB is to tell prospective bidders exactly what the Government wants to buy. The bidder is supposed to bid exactly in accordance with the terms and conditions of the IFB otherwise the bid is considered nonresponsive and is rejected.

What is the UCF?

The Uniform Contract Format (UCF) prescribes a 4-part, 13-section format to facilitate the preparation of the IFB and contract and the reference to, and use of, those documents by bidders and contractors.

Steps in Preparing an IFB

The steps in preparing an IFB are charted on the next page. Following the flowchart, each step is discussed in turn.

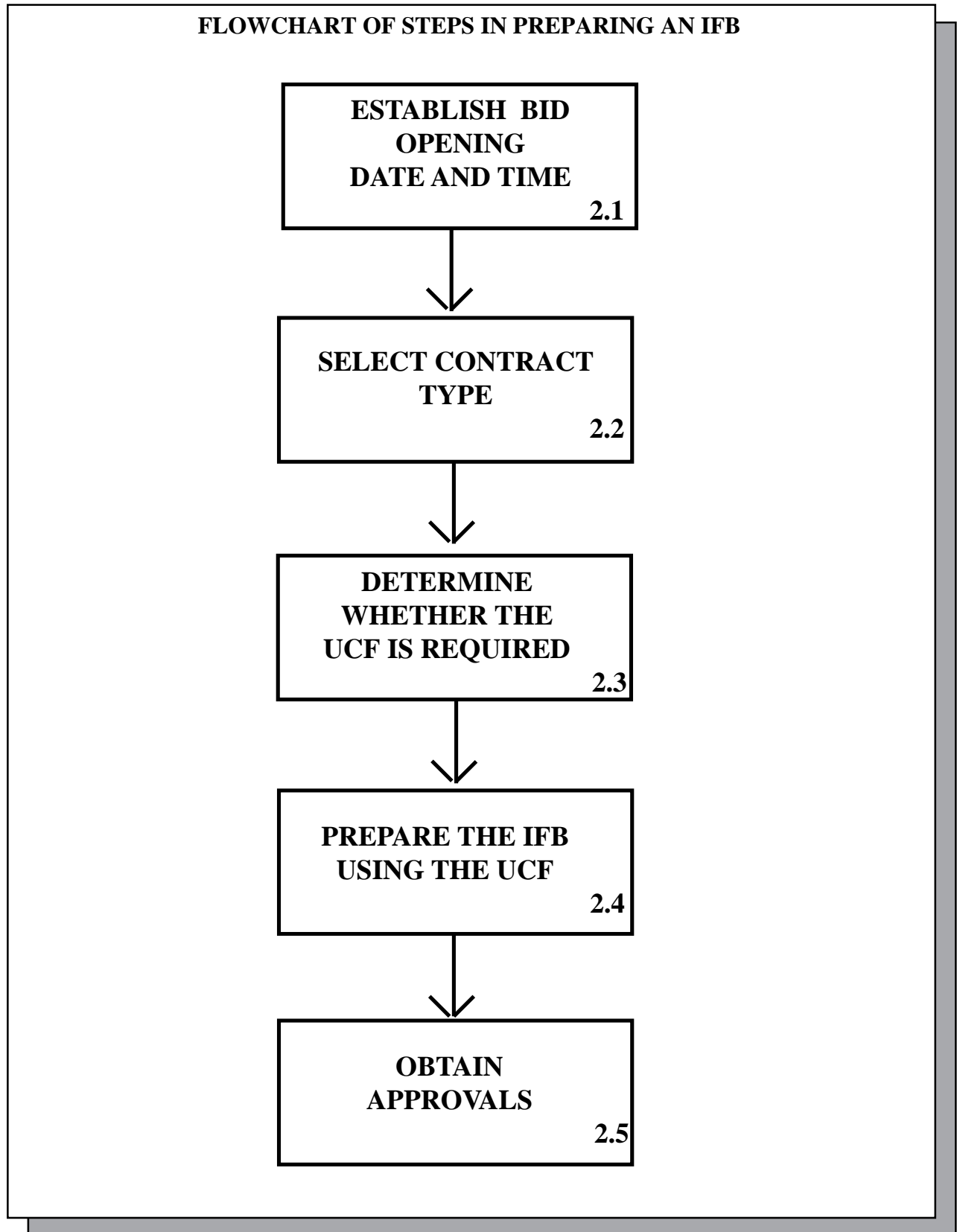


Exhibit 2-2. Flowchart of Steps in Preparing an IFB.

STEPS IN PREPARING AN IFB

2.1 ESTABLISH BID OPENING DATES AND TIMES

To maximize competition, the CO must allow sufficient time between the issuance of the IFB and the opening of bids. This time permits bidders to properly prepare and submit their bids. You should consider the following factors when determining the bid time:

- Complexity of the requirement
- Urgency of the Government's requirement
- Subcontracting possibilities
- Geographic location of bidders
- Whether pre-solicitation notices were sent to prospective bidders
- Seasonal workload requirements that may impact on a bidder's time for preparation of a bid
- Mailing time for the transmittal of both the invitation and the bid.

As a general rule, the time for preparations and submissions of bids shall not be less than 30 days from the date of issuance of an IFB. The requirements for publicizing and synopsisizing IFBs are contained in Chapter 3 of this textbook.

2.2 SELECT CONTRACT TYPE

After the decision has been made to use sealed bidding as the method of procurement, it is necessary to determine the contract type. The two types of contracts that may be used when contracting by sealed bidding are:

SEALED BIDDING CONTRACT TYPES

- Firm-Fixed Price (FFP)
- Fixed Price with Economic Price Adjustment (FP-EPA)

Exhibit 2-3. Contract Types.

THE SOLICITATION

2.2.1 Firm-Fixed Price Contract

Description: Contract price is fixed. It is not subject to adjustment due to the contractor's cost experience during contract performance.

Purpose: The following exhibit illustrates when you should use a firm-fixed price contract.

FIRM-FIXED PRICE CONTRACT

FAR 16.202-2

Used when:

- Definitive design or performance specifications are available.
- Supplies or services have been procured in the past.
- Available cost or pricing information permits realistic estimates of the probable costs of performance.
- Adequate price competition is anticipated.

*Exhibit 2-4. Firm-Fixed Price Contract.
[VG 2-6]*

Risk: Maximum cost risk is placed on the contractor.

Advantage: Less administrative burden to the Government than any other type of contract.

Explanation: Government's ability to obtain an FFP contract is directly related to the contractor's willingness to accept the risk of a firm-fixed price.

2.2.2 Fixed Price with Economic Price Adjustment (FP-EPA)

Description: Contract price provides for upward and downward revision upon occurrence of specified contingencies.

Purpose: The purpose of the FP-EPA contract is to remove contingency pricing by the bidders. The following exhibit illustrates when this type of contract should be used.

FIXED PRICE WITH ECONOMIC PRICE ADJUSTMENT

FAR 16.203-2; 16.203-4(d)(1)

Used when:

- Serious doubts about the stability of market or labor conditions based on cost indexes of labor and material exist.
- Contingencies can be identified and included separately in the contract price, such as labor and material contingencies.

Exhibit 2-5. Fixed Price with Economic Price Adjustment.

Risk: Shared risk by the Government and the contractor.

Advantages: To protect the contractor against inflation and the Government against deflation.

Explanation: During periods of instability, the Government's ability to get a contractor to take a risk on the contract is increased. The use of this contract type may increase competition.

THE SOLICITATION

2.2.3 Firm-Fixed Price Indefinite-Delivery (FFP-ID)

Indefinite-delivery contracts may provide for firm-fixed prices or fixed prices with economic price adjustment. Indefinite-delivery contracts are designed for use when the times or quantities of future deliveries are not known at the time of contract award. There are three types of indefinite-delivery contracts illustrated in Exhibit 2-6.

FIRM-FIXED PRICE INDEFINITE-DELIVERY

FAR 16.5

- Definite-Quantity
- Requirements
- Indefinite-Quantity

Exhibit 2-6. Firm-Fixed Price Indefinite-Delivery.
[VG 2-8]

2.2.3.1 FFP-ID — Definite-Quantity

Description: Provides for delivery of a definite quantity of specific supplies or services for a fixed period, with deliveries to be scheduled at designated locations upon order.

Purpose: The following exhibit illustrates when you should use a FFP-ID Definite-Quantity Contract

FFP-ID DEFINITE-QUANTITY

FAR 16.502

Used when:

- A definite quantity of supplies/services is required during the contract period.
- The supplies/services are regularly available or will be available after a short lead time.

Exhibit 2-7. FFP-ID Definite-Quantity.

- Risks:
- Greater risk to contractor because it is not known, at time of award, how many items will be shipped to each ordering office.
 - Contractor risk would be reduced if the contract calls for F.O.B. origin (i.e., Government pays the cost of shipping product).
- Advantages:
- Permits Government inventories to be maintained at minimum levels.
 - Permits direct shipment to user.

2.2.3.2 FFP-ID — Requirements

Description: Provides for filling all actual purchase requirements of designated Government activities for specific supplies or services during a specified contract period, with deliveries to be scheduled by placing orders with the contractor.

Purpose: The following exhibit illustrates when you should use FFP-Requirements Contract

| | |
|---|---|
| <p align="center">FFP-ID REQUIREMENTS</p> <p align="center">FAR 16.503</p> | |
| Used when | <ul style="list-style-type: none"> • the Government anticipates recurring requirements, but cannot pre-determine the precise quantities of supplies/services. • Supplies/services are commercial or commercial-type |

Exhibit 2-8. FFP-ID Requirements.

THE SOLICITATION

- Risks:
- Government cannot go to a different contractor for the same supplies/services without first fulfilling the requirements of the existing contract.
 - Maximum risk to contractor because contract is bound to a fixed price per unit on order, yet there is no certainty as to receipt of any orders or how many.

Advantages: In addition to the same advantages relevant to definite-quantity contracts, the following apply:

- Flexibility (Quantity and Delivery)
- Permits ordering as needed
- May permit fast deliveries when production lead time is involved. This is because contractors are usually willing to maintain limited stocks when the Government will obtain all of its actual purchase requirements from the contractor.

- Explanation:
- The CO states a realistic estimate of the total quantity after obtaining an estimate from:
 - Records of previous requirement and consumption.
 - Most current information available.
 - Contract should state, if feasible, the minimum and maximum limits of the contract.
 - Funds are obligated by each delivery order, not by the contract itself.

**2.2.3.3 FFP-ID —
Indefinite-Quantity**

Description: Provides for indefinite quantities, within stated limits, of specific supplies/services to be furnished during a fixed period. Deliveries are scheduled by placing orders with the contractor.

Purpose: The following exhibit illustrates when you should use a FFP-ID Indefinite-Quantity Contract

FFP-ID INDEFINITE-QUANTITY

FAR 16.504

Used when:

- The Government cannot pre-determine, above a specified minimum, the precise quantities of supplies/services required during the contract period.
- It is inadvisable for the Government to commit itself for more than a minimum quantity.
- Supplies/services are commercial or commercial-type.
- Recurring need is anticipated.

Exhibit 2-9. FFP-ID Indefinite-Quantity.

Risks:

- Less risk to contractor than with a requirements contract but more than with a definite-quantity contract.
- Government risk is minimal (i.e., only those supplies needed are ordered).

Advantages: In addition to the same advantages relevant to definite-quantity contracts, the following apply:

- Flexibility (Quantity and Delivery)
- Permits ordering as needed
- Minimal Government obligation

THE SOLICITATION

- Explanation:
- No exact quantity is in the contract, but minimum and maximum limits are stated.
 - Funds for other than the stated minimum quantity are obligated by each delivery order, not by the contract itself.

Exhibit 2-10 sums up the advantages of the indefinite-delivery contracts.

| FFP-ID CONTRACTS | | | |
|--|-------------------|--------------|---------------------|
| Advantages | Definite Quantity | Requirements | Indefinite Quantity |
| Permits Gov't inventories to be maintained at minimum levels | X | X | X |
| Permits direct shipment to user | X | X | X |
| Flexibility: Quantity & Delivery | | X | X |
| Permits ordering as needed | X | X | X |
| Minimal Gov't obligation | | X | X |
| May permit fast deliveries | | X | X |

Exhibit 2-10. Advantages of Indefinite-Delivery Contracts.

Exhibit 2-11 is a decision table showing examples of conditions that may influence the selection of contract type.

| DECISION TABLE ON CONTRACT TYPES | |
|---|--|
| IF THE CONDITIONS CALL FOR: | THEN CHOOSE THIS CONTRACT TYPE: |
| Firm quantities and firm delivery dates | Firm-Fixed Price |
| Market or labor conditions are unstable | Firm-Fixed Price with Economic Price Adj. |
| Industry-wide contingencies beyond bidders control | Firm-Fixed Price with Economic Price Adj. |
| Deliveries are unknown and quantities are known | Indefinite-Delivery, Definite Quantity |
| Quantities and deliveries are unknown; a minimum quantity is guaranteed | Indefinite-Delivery, Indefinite Quantity |
| Quantities are unknown; All orders to be placed with one contractor | Indefinite-Delivery, Requirements |

Exhibit 2-11. Decision Table on Contract Types.

THE SOLICITATION

2.3 UNIFORM CONTRACT FORMAT (UCF)

At this point you have an acceptable purchase request and acquisition plan, and you have selected the contract type. Now that you know what you want, you are ready to assemble a solicitation which will eventually become the basis of a contract for delivery of your requirement. The essential elements of a contract are: offer, acceptance and consideration.

In order to obtain an offer (referred to as a bid in sealed bidding and a proposal in negotiation) the Government usually issues a solicitation for offers (IFB in sealed bidding and RFP in negotiation) to all interested parties. The solicitation must include:

- as many of the terms, conditions, and other information that will constitute the final contract,
- all the information the interested parties need to prepare a complete offer, and
- the general rules under which the competition will be conducted.

The solicitation is the foundation of the contractual process and requires your full attention. A well prepared solicitation will accomplish four main objectives:

1. The soliciting of competitive, responsive bids
2. Proper evaluation by the Contracting Officer
3. Fair and reasonable prices
4. A quality product or service

Failure to adequately describe the terms and conditions could cause some problems, such as:

- Selecting and awarding to the wrong bidder
- Untimely or no delivery
- Excessive costs
- Delays in the pre- and post-award phases of the Procurement
- Protests by unsuccessful bidders

UNIFORM CONTRACT FORMAT

FAR 14.201-1

Part I - The Schedule

| Section | Title |
|---------|---------------------------------|
| A | Solicitation/Contract Form |
| B | Supplies or Services and Prices |
| C | Description/Specifications |
| D | Packaging and Marking |
| E | Inspection and Acceptance |
| F | Deliveries or Performance |
| G | Contract Administration Data |
| H | Special Contract Requirements |

Part II - Contract Clauses

| Section | Title |
|---------|------------------|
| I | Contract Clauses |

Part III - List of Documents, Exhibits, and Other Attachments

| Section | Title |
|---------|--|
| J | List of Documents, Exhibits, and Other Attachments |

Part IV - Representations and Instructions

| Section | Title |
|---------|--|
| K | Representations, Certifications, and Other Statements of Bidders |
| L | Instructions, Conditions, and Notices to Bidders |
| M | Evaluation Factors for Award |

Exhibit 2-12. The Uniform Contract Format (UCF).

THE SOLICITATION

2.3.1 Determine Whether the UCF is Required

CO's use the uniform contract format (UCF) to the maximum extent possible. Even though the UCF is generally the correct format to use in preparing an IFB, there are times when the UCF is not required, as listed at Exhibit 2-13.

EXCEPTIONS TO THE UCF

FAR 14.201-1(a)

- Construction
- Shipbuilding and related activities
- Supplies or services requiring special contract forms prescribed in other FAR parts that are inconsistent with the UCF (e.g., contracts for the dismantling, demolition, or removal of improvements or step one of two-step sealed bidding).
- Subsistence items
- Firm-fixed-price or fixed-price with economic price adjustment acquisitions that use the simplified contract format. (See Section 2.4.6)

Exhibit 2-13. Exceptions to the UCF.

2.4 PREPARE THE IFB USING THE UCF

Exhibit 2-12, in Section 2.3, shows the different parts and sections of the UCF. Each section requires specific types of information to be included by the CO and the bidder. Sections 2.4.1 through 2.4.4 of this text are structured to show the following information on the sections of the UCF:

- Purpose
- Contents
- CO duties
- Bidder's actions
- Explanation (if applicable)
- Forms (if applicable)

2.4.1 Part I - The Schedule

2.4.1.1 Section A — Solicitation/Contract Form

- Purpose:
- Provides basic information on the IFB
 - Serves as award document if executed by CO

| | |
|--------------------|---|
| Contents: | <ul style="list-style-type: none">• Solicitation number• Name and address of issuing authority• Number of pages• Where bids are to be sent• Date, hour, and place of opening• Type of solicitation (e.g., Sealed Bidding or Negotiation)• Minimum bid acceptance period, if applicable• Discount for prompt payment• Acknowledgement of amendments• Name and address of bidder• Name and telephone number of buyer• Table of contents filled out, showing number of pages in each section• Place for name and title of person authorized to sign bid• Place for signature of bidder• Place for telephone number of bidder |
| CO Duties: | Fill in data for items shown in the "solicitation" section of the form. |
| Bidder Actions: | Fill in data for items shown in the "offer" section of the form. |
| Explanation: | Most of the information necessary to fill in this section (e.g., solicitation number, etc.) comes from the purchase request and from the contracting office. |
| Forms: | Generally standard Form 33 is used as the first page of the IFB and constitutes Section A. The SF 33 is the proper bid form, but a bidder may use its own form or a letter to submit a bid. A bid submitted on a form other than the SF 33 may be considered for award only if the bidder includes the above information and accepts all terms and conditions of the IFB. In addition, the award on the IFB has to result in a binding contract that complies with the terms and conditions of the IFB. |

THE SOLICITATION

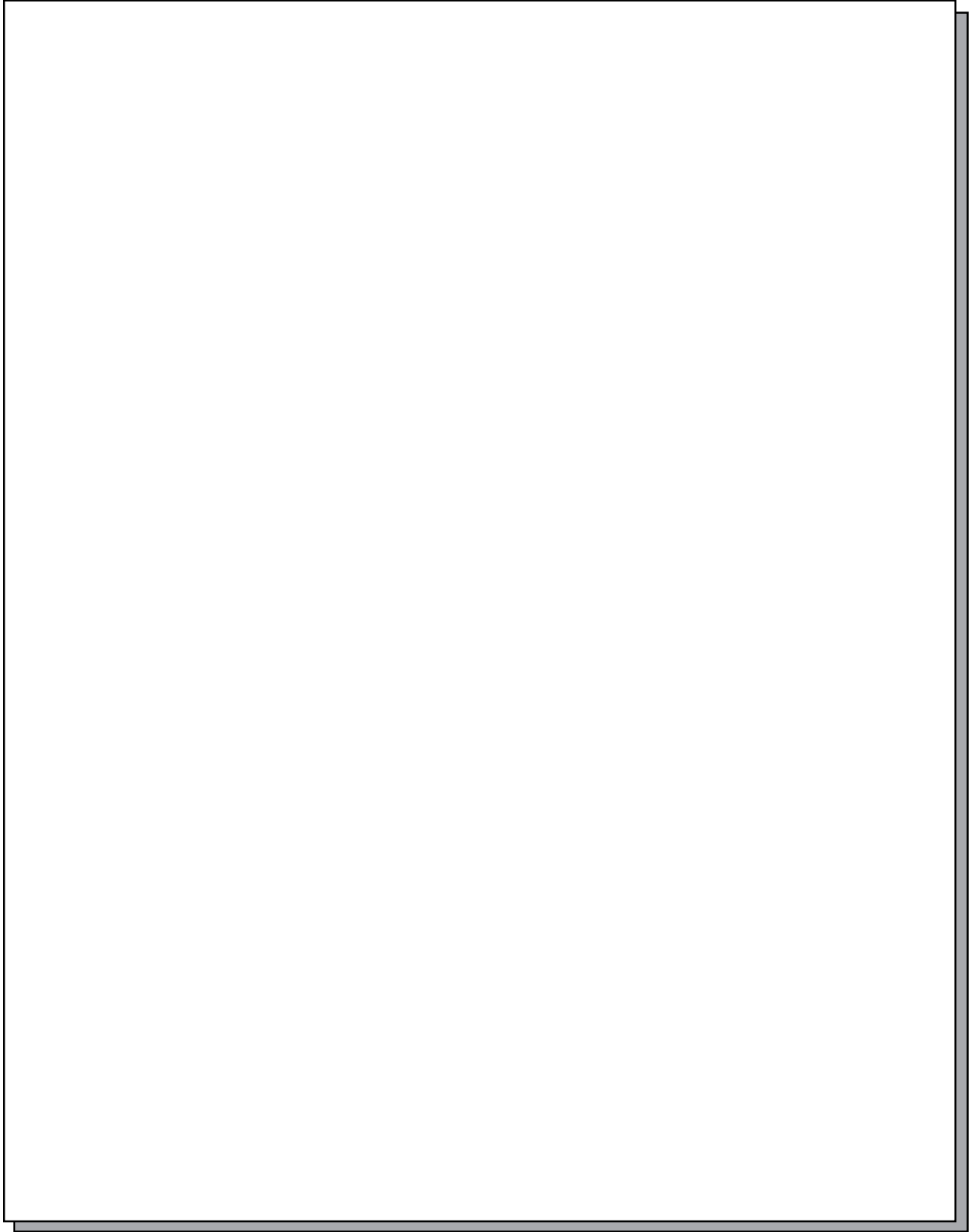


Exhibit 2-14. Standard Form 33.

**2.4.1.2 Section B —
Supplies or Services
and Prices**

| | |
|--------------------|---|
| Purpose: | <ul style="list-style-type: none"> • Briefly describes the supplies or services to be acquired. • Provides the location in the IFB for the bidders to fill in their priced offers. |
| Contents: | <ul style="list-style-type: none"> • A brief description of the supplies/services to be acquired. • Item number/part number. • Incidental deliveries (manuals or reports). • Term of contract. • National stock number/part number, if applicable • Names of supplies/services and quantities • Unit type (e.g., box, each, dozen, etc.) • Unit price |
| CO Duties: | Prepare the above contents. |
| Bidder Actions: | Provide information as required to fully specify intentions. State bid price(s) in U.S. dollars. |
| Explanation: | Most of the information etc. (see 2-15) from the purchase request |
| Forms: | Optional Form (OF) 336—Continuation Sheet may be used to supplement Standard Forms. |

THE SOLICITATION

A large, empty rectangular box with a thin black border, representing the solicitation form. The box is oriented vertically and occupies most of the page area below the title and above the caption.

Exhibit 2-15. Optional Form 336.

2.4.1.3 Section C — Description/Specifications

Purpose: Supplements the brief description in Section B (e.g., fully describes the supplies or services to be acquired). The metric system of measurements shall be used unless its use is impractical or is likely to cause harm to U.S. firms.

Contents: Detailed description/specifications [e.g., Commercial Item Descriptions (CIDs)] necessary for a clear and concise description of the supplies/services outlined in Section B, which will permit full and open competition.

FAR 10.002

CO Duties: Prepare this section based on the purchase request.

Bidder Actions: Provide information in the bid, if necessary to confirm understanding or compliance with specifications.

Explanation: This information is usually provided by the requiring activity when in full text or as a citation if a Federal or Military Specification exists.

FAR 10.004(b)(3)

Examples: Following is an example of a type of specification that may go in Section C when applicable.

Brand Name or Equal. Specifications should be clear and unambiguous and they must not restrict competition. The most obvious type of restriction is a reference to a brand-name product. Although such a description is sometimes necessary, it is permissible in supply acquisitions only when the term “or equal” is appended to it “and when an adequate specification or more detailed description cannot feasibly be made available by means other than inspection and analysis in time for the acquisition under consideration.” The addition of these phrases allows other contractors to furnish supplies that have the same essential characteristics as the brand name item. If the brand-name product is the only one that can meet the Government requirements, it must be determined, in accordance with agency procedures, that one or more particular features of the brand-name product are essential to the Government’s requirements (i.e., other companies’ similar products lacking that particular feature would not meet the minimum requirements). Further, if the “or equal” purchase description is used, the salient characteristics essential to performance must be spelled out to permit evaluation of products offered.

THE SOLICITATION

2.4.1.4 Section D — Packaging and Marking

FAR 10.004(e)

| | |
|--------------------|---|
| Purpose: | Describes how packaging and marking requirements affect the contract bid prices. |
| Contents: | Any agency clauses which state the Government's requirements. |
| CO Duties: | Prepare Section D to meet Government requirements. Include packaging and marking requirements in full text or by reference. |
| Bidder Actions: | Provide information as required to fully specify intentions. |
| Explanation: | This information is dependent upon agency requirements concerning packaging and marking. |
| Forms: | None |
| Examples: | <p>Examples of packaging and marking issues:</p> <ul style="list-style-type: none">• Packaging<ul style="list-style-type: none">- Paper carton- Metal container• Preservation<ul style="list-style-type: none">- Water sealed- Salt water protection• Packing<ul style="list-style-type: none">- Nesting for sensitive electronic parts- Styrofoam• Marking (i.e., how the package is marked)<ul style="list-style-type: none">- "Handle With Care"- "Store At Room Temperature" |

2.4.1.5 Section E — Inspection and Acceptance

| |
|----------------|
| FAR 46.2, 46.3 |
|----------------|

Purpose: Describes how quality and reliability requirements are part of the specifications and how they affect the prices bid.

Contents:

- Applicable FAR and agency clauses on inspection and acceptance.
- Any special or specific inspection requirements not covered by contract clauses or by specifications.

CO Duties: Include all applicable clauses and specifications by reference or in full text. Fill in clauses as appropriate.

Bidder Actions: Provide information as required to fully specify intentions. Fill in appropriate clauses.

Explanation: This information is usually provided by the requiring activity as a part of their purchase request and is dependent upon FAR and agency requirements.

Note: Every contract should have a baseline or standard for use in determining whether the work performed is acceptable (i.e., meets specification requirements) or should be rejected. Payment is made for accepted work.

Example: If you buy a desk, the Contracting Officer Technical Representative (COTR) or inspector will inspect the desk to ensure it meets the specifications outlined in the IFB.

THE SOLICITATION

2.4.1.6 Section F — Deliveries or Performance

| | |
|-----------------|--|
| Forms: | None |
| Purpose: | <ul style="list-style-type: none">• Establishes the date(s) for delivery of supplies or the period of performance for services.• Measures the acceptability of a contractor's performance against time as well as specification quality requirements. |
| Contents: | <ul style="list-style-type: none">• Time/method for delivery or performance.• Place of performance. |
| CO Duties: | Include all applicable clauses. Fill in clauses as appropriate. |
| Bidder Actions: | Provide information as required to fully specify intentions. |
| Explanation: | This information is usually provided by the requiring activity as a part of their purchase request and is dependent upon FAR and agency requirements. |
| Examples: | Examples of clauses included may be liquidated damages and transportation clauses (i.e, F.O.B. origin) when appropriate. |

2.4.1.7 Section G — Contract Administration Data

| | |
|-----------|--|
| Purpose: | <ul style="list-style-type: none">• Identifies the name and location of the Government activity that will: (1) administer the awarded contract, and (2) make payments under the contract.• Directs the contractor where to send invoices and other contract administration matters. |
| Contents: | Any agency clause and any special requirement such as: <ul style="list-style-type: none">• Name, address, telephone number of the payment office.• Accounting and appropriations data.• Compliance with the Prompt Payment Act |

CO Duties: Prepare the above contents as required, if not included on the solicitation form.

Bidder
Actions: Provide information as required to fully specify intentions.

Explanation: This information is usually provided by the requiring activity as a part of their purchase request. Standard office procedures may have been established and agency specific clauses developed.

**2.4.1.8 Section H —
Special Contract
Requirements**

Purpose: Provides a special location for requirements that may occur on a contract-by-contract basis (e.g., special security requirements pertaining to classified materials).

Contents:

- Special paragraph numbering system.
- Reference documents.
- Experience qualifications (See description below).

CO Duties: Include a clear statement of the special contract requirements, not included in Section I.

Bidder
Actions: Comply with the special instructions and special requirements as needed.

Explanation: Include anything in this section that is not included in Part II, Section I, Contract Clauses, or in other sections of the UCF. Section H may or may not be utilized. If this section is not used, then write “not applicable” under the section title.

Example: Following is an example of a type of special requirement that may go in Section H:

Experience Qualifications. If the requirements of an acquisition are highly specialized, the CO may conclude that an example or verification of the bidder’s experience is required before considering them for award. The IFB normally requires that experience qualifications be provided with the bid. However, it is not essential that the bidder(s) provide qualification information at the time of bid opening as long as it is provided prior to award.

THE SOLICITATION

2.4.2 Part II - Contract Clauses

2.4.2.1 Section I — Contract Clauses Purpose: Locates all clauses that are applicable to the IFB into one section.

FAR 52.1

Contents: All clauses prescribe by the FAR and your agency's supplement to the FAR that are required or appropriate for the particular IFB.

CO Duties: Ensure that all clauses applicable to an IFB are included in either full text or by reference. (See clause examples at Appendix A.)

Bidder Actions: Provide information as required to fully specify intentions.

Explanation: This information is usually provided by the requiring activity as a part of their purchase request and as a result of your analysis of the procurement documented on the acquisition plan.

Examples: Examples of clauses that may be inserted in Section I, as applicable:

- Method of payment
- Invoice requirements
- Adjusting payments
- Progress payments
- Option to extend the term of contract
- Selection of contract types (See Section 2.2)
- Prompt Payment (See description below)
- Affirmative Action for Handicapped Workers Act (See description below)
- Officials Not to Benefit
- Gratuities
- Covenant Against Contingent Fees
- Restrictions on Subcontractor Sales to the Government
- Economic Price Adjustment
- Notice of Total Small Business—Labor Surplus Area Set Aside
- Contract Work Hours and Safety Standards Act—Overtime Compensation
- Walsh-Healey Public Contracts Act

FAR 52.232-25

Prompt Payment. The Prompt Payment Act requires federal agencies to pay contractor invoices on time, to pay interest penalties when payments are late, and to take discounts only when payments are made within the discount period. The Director, Office of Management and Budget, issued a regulation in Circular A-125 to implement the Act. These regulations are intended to result in timely payment of contractor invoices, better business relationships with contractors, improved competition for Government business, and reduced costs to the Government for goods and services. FAR 32.901 and 32.908 require the prompt payment clause in each contract subject to the Act, with a few exceptions.

COs include the prompt payment clause in each contract subject to the Act. COs ensure that invoices are processed in a timely manner so that payment is made as close as possible to, but not later than, the due date or, if appropriate, the discount date. Payment is based on receipt of proper invoices and satisfactory performance of contract terms.

FAR 52.222-36

Affirmative Action for Handicapped Workers. In all employment practices, the contractor is required to take affirmative action to employ, advance in employment, and otherwise to treat qualified handicapped individuals without discrimination based on their physical or mental handicaps. This clause is inserted in all IFBs or purchase orders that exceed or are expected to exceed \$2,500.

THE SOLICITATION

2.4.3 PART III - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

| | | |
|---|--------------------|---|
| 2.4.3.1 Section J — List of Documents, Exhibits or Other Attachments | Purpose: | Provides a central location for any special information or requirements not appropriate for including in other sections. |
| | Contents: | Title, date, and number of pages for each attached document, exhibit, or other attachment. |
| | CO Duties: | Ensure that all attachments are included and properly annotated with the title, date, and number of pages listed. |
| | Bidder Actions: | Provide information as required to fully specify intentions. |
| | Explanation: | This information is usually provided by the requiring activity as a part of their purchase request. |
| | Examples: | Special information might include: Conditions that prevail when providing services on a Government installation, such as: insurance or vehicle registration requirements. These documents generally pertain to conditions of performance rather than specifications applicable to the work being done. |

2.4.4 PART IV - REPRESENTATIONS AND INSTRUCTIONS

| | | |
|---|------------|---|
| 2.4.4.1 Section K — Representations, Certifications, and Other Statements of Bidders | Purpose: | Determines whether or not a bidder is eligible for award (e.g., Is bidder a small business? Is bidder a manufacturer or regular dealer?). |
| | Contents: | Provisions that require representations, certifications, or submission of other information by bidders. Most provisions in Section K are provided in full text. Section K items may affect the award of a contract, but they do not become a physical part of the resulting contract. |
| | CO Duties: | Ensure that required provisions for representations, certifications, or submission of other information by bid- |

FAR 52.3

FAR 14.213

ders are included in the IFB. Determine whether to request annual submission of representations and certifications.

Bidder Actions: Bidder must provide information and make correct certifications and representations. Many of the actions require the checking of an appropriate box or filling in a blank.

Explanation: This information is dependent upon FAR and agency-specific requirements.

2.4.4.2 Section L — Instructions, Conditions, and Notices to Bidders

Purpose: Describes special requirements pertaining to:

- Bid preparation items (e.g., submission of bonds, bid samples, etc.).
- Special qualification requirements (e.g., special standards of responsibility) (Chapter 7).
- Solicitation provisions and how the invitation and award process will be conducted (e.g., the handling of late bids and the award of less than all items).

Note: Section L items may affect the award of a contract but they do not become a physical part of the contract.

Contents:

- Provisions for submission of bids
- Special qualification standards
- Licensing requirements
- Bond guarantees
- Performance or payment bond
- Requirement for bid samples (See description below)
- Requirement for descriptive literature (See description below)

CO Duties: Prepare the above contents, as required.

Bidder Actions: Provide information as required to fully specify intentions.

THE SOLICITATION

Explanation : This information is usually provided by the requiring activity as a part of their purchase request and as a result of your analysis of the procurement documented on the acquisition plan.

Examples: Following are examples of a type of special requirement that may go in Section L:

| |
|-------------------------------|
| FAR 14.201-6(o); 52.214-40 |
|-------------------------------|

Bid Samples are furnished by the bidder to show characteristics of the product being offered in a bid. Require bidders to submit bid samples only if the characteristics of the product cannot be adequately described in a specification or purchase description. The criteria used to evaluate the sample for its conformity to the Government's requirement must be stated in the IFB. Bid samples must be furnished as part of the bid and must be received by the time specified for receipt of bids. The samples become a part of the public disclosure at the time of bid opening.

Ordinarily, the need for a bid sample must be justified and documented in the contract file. However, it is not necessary to justify the need for a bid sample if a specific requirement for one is set forth in a Federal or Military specification and is referenced in the contract. If bid samples are required, they may be waived when a bidder offers a product that has previously been submitted and accepted.

| |
|-------------------------------|
| FAR 14.201-6(p); 52.214-21 |
|-------------------------------|

Descriptive Literature is information, such as cuts, illustrations, drawings, and brochures, which shows the characteristics or construction of a product or explains its operation. Bidders must submit descriptive literature as a part of their bid only when it is clearly required by the IFB. Descriptive literature includes only information required to determine the acceptability of the product. It excludes information on the qualifications of a bidder and instructions for operating or maintaining equipment.

The IFB should require the submission of descriptive literature only when it is essential for the purchasing activity to determine that the offered product does, in fact, meet the specifications and to establish exactly what the bidder proposes to furnish. The IFB should state the rules that will apply if the literature is not submitted before bid opening or if it does not comply with the IFB requirements.

If a bidder submits restricted literature (e.g., containing trade secrets), the bid may be rendered nonresponsive unless disclosure of sufficient information is authorized. This permits competing bidders to know the essential nature and type of products offered or those elements of the bid relating to quantity, quality, price, and delivery terms, allowing full and open competition.

2.4.4.3 Section M — Evaluation Factors for Award

Purpose: Tells the prospective bidders how bids will be evaluated.

Note: When contracting by sealed bidding, award is made to the low, responsive, responsible bidder whose price is fair and reasonable. However, to determine the low bid, it may be necessary to consider price-related factors. If price-related factors are to be used, the factors must be disclosed in the IFB. Section M items may affect the award of the contract but they do not become a physical part of the contract.

Contents: Description of how the bid will be evaluated to determine the lowest bidder. A partial list of price-related factors includes:

- Transportation costs
- Multiple award considerations
- Origin of supplies
- Government furnished property

CO Duties: Include any appropriate evaluation factors in the IFB.

**Bidder
Actions:** Submit bid in accordance with instructions.

Explanation: Identification of the low bid can be based only on those evaluation factors stated in the IFB. This information is usually provided by the requiring activity as a part of their purchase request and as a result of your analysis of the procurement documented on the acquisition plan.

THE SOLICITATION

2.4.5 SELECT CONTRACT CLAUSES AND SOLICITATION PROVISIONS

2.4.5.1 Difference Between Contract Clauses and Solicitation Provisions

FAR 52.101(a)

The IFB contains both solicitation provisions and contract clauses. The difference between a contract clause and a solicitation provision is that, generally, contract clauses apply to the awarded contract, whereas solicitation provisions apply to the IFB instructions to bidders for submitting bids. Part IV of the UCF (See Section 2.3) contains the solicitation provisions that are placed in the IFB. Upon award of the contract, the CO shall not physically include Part IV in the resulting contract, but shall retain it in the contract file. Section K (Representations, Certifications, and Other Statements of Bidders) of Part IV is, however, incorporated in the resultant contract by reference even though not physically attached.

2.4.5.2 Determine the Provisions and Clauses that Go Into an IFB

FAR 14.201-6 and 7

You need to utilize the FAR, especially Subpart 52.3 which is the Provision and Clause Matrix, and your agency clause manual and/or FAR supplement to determine which solicitation provisions or contract clauses are to go into an IFB. Some solicitation provisions and contract clauses are required in all IFBs. Some are required where applicable. Some are optional.

The FAR Provision and Clause Matrix is arranged by provision and clause number and lists the:

- Required solicitation provisions
- Required-When-Applicable solicitation provisions
- Optional solicitation provisions
- Required contract clauses
- Required-When-Applicable contract clauses
- Optional contract clauses

In addition, the matrix provides:

- Clause/provision incorporated by reference or full text
- UCF section location
- Clause/provision number
- FAR text reference
- Clause/provision title

This information and other key decisions can be found in the Purchase Request and the acquisition or procurement plan.

Agency Clause Books

The large amount of clauses and provisions that go into an IFB can be somewhat overwhelming. You may wonder how you will learn which clauses or provisions are appropriate for any given solicitation. Most agencies maintain clause books and have available separate IFB packages for supplies, services, construction, and special item buys. A senior contract specialist and counsel generally work closely to maintain these packages and keep them up-to-date. This alleviates the frustration that can occur for the junior contract specialist when choosing clauses and provisions for a solicitation.

THE SOLICITATION

2.4.5.3 Determine When a Contract Clause is Applicable

The clauses included in the IFB are those that are required by law or regulation. Clauses inserted in Section I of the UCF are not inserted in any of the other sections. The CO is responsible for the selection of clauses based on the considerations above and the particular use of the clause as set forth in the FAR.

FAR 52.203.1

As an example, one of the first clauses listed in the Provision and Clause Matrix is entitled "Officials Not To Benefit." This clause states that no member of Congress shall benefit from the contract. The clause must be included in all IFBs except those related to agriculture.

2.4.5.4 Required and Required-When-Applicable Clauses

There are certain clauses that are Required and certain clauses that are Required-When-Applicable to various IFBs. The following list shows the Required clauses that must be included in the IFB for Firm-Fixed Price Supply or Service contracts:

- 52.202-01, Definitions (By Reference)
- 52.203-05, Covenant Against Contingent Fees (By Reference)
- 52.203-06, Restriction on Subcontractor Sales to the Government (By Reference)
- 52.233-03, Protest After Award (By Reference)
- 52.243-01, Changes—Fixed Price (By Reference)

You should incorporate Required-When-Applicable clauses, either in full text or by reference, depending on the specific requirements that you want to place in the IFB.

For example, suppose you are purchasing supplies using a sealed bid, firm-fixed price contract expected to exceed \$100,000 and decide you need an audit clause. You would be required to include the clause 52.214-26—Audit-Sealed Bidding and not the clause 52.215-02—Audit-Negotiation, because this clause is used for a different method of procurement. (Appendix A lists six examples of different types of clauses and how they are used.)

2.4.5.5 Clauses Used In Special Situations

FAR 14.201-7

At times there are special situations requiring specific contract clauses, for example the following list provides clauses included in IFBs that are expected to exceed \$100,000.

- 52.214-26 Audit-Sealed Bidding (Section I, by reference)
- 52.214-27 Price Reduction for Defective Cost or Pricing Data-Modifications-Sealed Bidding
- 52.214-28 Subcontractor Cost or Pricing Data-Modifications-Sealed Bidding

2.4.5.6 Alternates to FAR Clauses

There are FAR alternates to some contract clauses. For example, the FAR clause on the First Article Approval—Contractor Testing has two alternates. The following decision table shows how to select the appropriate version of the clause:

| DECISION TABLE CLAUSE WITH ALTERNATES (FAR 52.209-3) | |
|---|---|
| IF IFB REQUIRES: | THEN USE CLAUSE: |
| A first article approval and Contractor to conduct the first article test and: | 52.209-03—First Article Approval-Contractor Testing |
| Contractor to produce the first article and the production quantity at the same facility and/or: | Add Alternate I paragraph (h) to the basic clause |
| Contractor to purchase material or start production for paragraph (g) of the basic clause before the first article approval | Substitute Alternate II paragraph (g) |

Exhibit 2-16. Decision Table (Clause Example).

THE SOLICITATION

At each Government agency contract activity there is a senior contract specialist who helps prepare IFB packages and he/she will be glad to help you make these alternate clause selections.

2.4.5.7 Contract Clauses Incorporated in Full Text or By Reference

FAR 52.102-1

The fourth column of the FAR Provision and Clause Matrix shows whether you should incorporate the contract clause by reference or in full text. When a contract clause is incorporated by reference, it means that the clause number is referenced in the IFB. Even though it is only referenced, it is still part of the contract because you stated the reference. When a contract clause is incorporated in full text, the entire clause is stated in the IFB. Normally, most clauses will be incorporated by reference. However, if requested, provide the prospective bidder with a copy of the full text of any clause that is incorporated by reference. (Solicitation provisions are also included in full text or by reference.)

2.4.5.8 Complete Contract Clauses

In some clauses in an IFB, the CO may have to fill out some of the “blanks” before the IFB is issued. For example, on FAR 52.212-9 (Variation in Quantity), if the CO determines that a variation in quantity will be allowed, he/she must indicate the percent increase or decrease in the blank provided at paragraph (b).

2.4.5.9 Determine When a Solicitation Provision is Applicable

FAR 14.201-6

The following provisions are required in all IFBs:

- 52.214-1, Solicitation Definitions - Sealed Bidding (By Reference)
- 52.214-2, Type of Business Organization - Sealed Bidding (Full Text)
- 52.214-3, Acknowledgement of Amendments to IFBs (By Reference)
- 52.214-4, False Statements in Bids (By Reference)
- 52.233-2, Service of Protest, (Full Text)

Other provisions are used in an IFB when applicable. The provisions are used when needed, based on the particular situation. The following are examples of required provisions that (when applicable) are incorporated in the IFB:

- 52.214-14 Place of Performance — Sealed Bidding

In all IFBs except those in which the place of performance is specified by the Government (Full Text).

- 52.214-16 Minimum Bid Acceptance Period

To be used, if the CO determines that a minimum acceptance period must be specified. NOTE: Not applicable to construction contracts (Full Text).

Many of the provisions are prescribed where a particular subject is discussed in the FAR, such as:

- 52.207-4 Economic Purchase Quantity — Supplies

If the CO does not have economic order data for a given item, this provision should be included in the IFB. This provision invites bidders to state an opinion on whether the quantity(ies) of supplies on which bids are requested in the solicitation is(are) economically advantageous to the Government. If the bidder believes that acquisition(s) in different quantities is(are) more favorable to the Government, then they are invited to recommend an economic purchase quantity. If different quantities are recommended, a total and a unit price must be quoted for applicable items.

Supplies should be procured in quantities that result in the total and unit cost that is most advantageous to the Government if it is practical to do so, and the quantities do not exceed the quantities reasonably expected to fulfill agency needs. Sometimes, however, your agency's need for a particular quantity might not coincide with a quantity that is economically feasible for a manufacturer or supplier to produce or deliver. For example, a requirement for 50 gallons of a special solvent might be more economically filled by an order for 55 gallons if the solvent is normally prepared in 55 gallon (drum) quantities.

THE SOLICITATION

Exhibit 2-17 shows several examples of different clauses and provisions and how they are incorporated.

EXAMPLES OF CLAUSES AND PROVISIONS FULL TEXT OR BY REFERENCE

Clauses - (Section I of the UCF)

| | | |
|-----------|---|--------------|
| 52.214-26 | Audit - Sealed Bidding | By Reference |
| 52.214-27 | Price Reduction | By Reference |
| 52.252-4 | Alterations in Contract | Full Text |
| 52.214-28 | Subcontractor Cost | By Reference |
| 52.232-25 | Prompt Payment Act | By Reference |
| 52.222-36 | Affirmative Action for Handicapped Workers | By Reference |

Provisions - (Section K of the UCF)

| | | |
|-----------|----------------------------------|-----------|
| 52.214-2 | Type of Business | Full Text |
| 52.214-14 | Place of Performance | Full Text |
| 52.214-16 | Minimum Bid Acceptance Period | Full Text |
| 52.207-4 | Economic Purchase Quantity | Full Text |
| 52.219-3 | Women-Owned Small Business | Full Text |
| 52.209-1 | Qualification Requirements | Full Text |

Provisions - (Section L of the UCF)

| | | |
|-----------|---|--------------|
| 52.214-1 | Solicitation Definitions | By Reference |
| 52.214-3 | Amendments to IFBs | By Reference |
| 52.214-4 | False Statements in Bids | By Reference |
| 52.214-13 | Telegraphic Bids | By Reference |
| 52.214-20 | Bid Samples | By Reference |
| 52.214-21 | Descriptive Literature | By Reference |
| 52.210-1 | Availability of Specs. Listed in the Index of Fed. Specs. and Standards | Full Text |

Exhibit 2-17. Examples of Clauses and Provisions.

2.4.5.10 Deviations from FAR Clauses or Provisions

FAR 1.4

A deviation from the FAR is the issuance or use of a policy, procedure, solicitation provision, contract clause, method, or practice of conducting an acquisition action of any kind that is inconsistent with the FAR.

Conforming with the FAR gives the Government's contracting process discipline, uniformity, and consistency. However, sometimes either the process or the particular procurement might be enhanced by deviating from a FAR requirement. Two important statements contained in that policy are:

“The development and testing of new techniques and methods of acquisition should not be stifled simply because such action would require a FAR deviation.”

“Unless precluded by law, executive order, or specific regulation, deviations from the FAR may be granted as specified in this subpart when necessary to meet the specific needs and requirements of each agency.”

Often, deviations are requested in connection with delivery, testing, and patent clauses, evaluation, and multiple technical proposal provisions. Indiscriminate requests for deviations are discouraged. However, if you believe that deviating from an existing clause, provision, policy, or procedure would improve a proposed procurement, recommend to the CO that a deviation be granted. Handle any deviation from the FAR in accordance with the procedures prescribed in the FAR and in your agency's supplement to the FAR.

2.4.6 Simplified Contract Format

FAR 14.201-9

For firm-fixed price contracts (or FFP with EPA), you may decide to use the simplified contract format which allows you flexibility in preparing the solicitation/contract. To the extent possible the following format should be used:

THE SOLICITATION

1. SOLICITATION/CONTRACT FORM

- Use SF 1447, Solicitation/Contract, as the first page.

2. CONTRACT SCHEDULE (for each line item)

- Line item number
- Description of supplies or services
- Quantity and unit of issue
- Unit price and amount
- Packaging and marking requirements
- Inspection, acceptance, quality assurance
- Place and date of delivery, period of performance
- Item peculiar performance

3. CLAUSES

- Clauses required by regulation
- Clauses absolutely necessary for the acquisition

4. LIST OF DOCUMENTS and ATTACHMENTS, if needed.

5. REPRESENTATIONS and INSTRUCTIONS

- Representations and certifications
- Instructions, conditions, and notices
- Evaluation factors for award

Upon award the provisions in 5 above need not be physically included in the resulting contract. Award by acceptance of a bid on the award portion of SF 1447 (See Exhibit 2-18) incorporates the representations, certifications, and other statements of bidders in the resultant contract by reference.

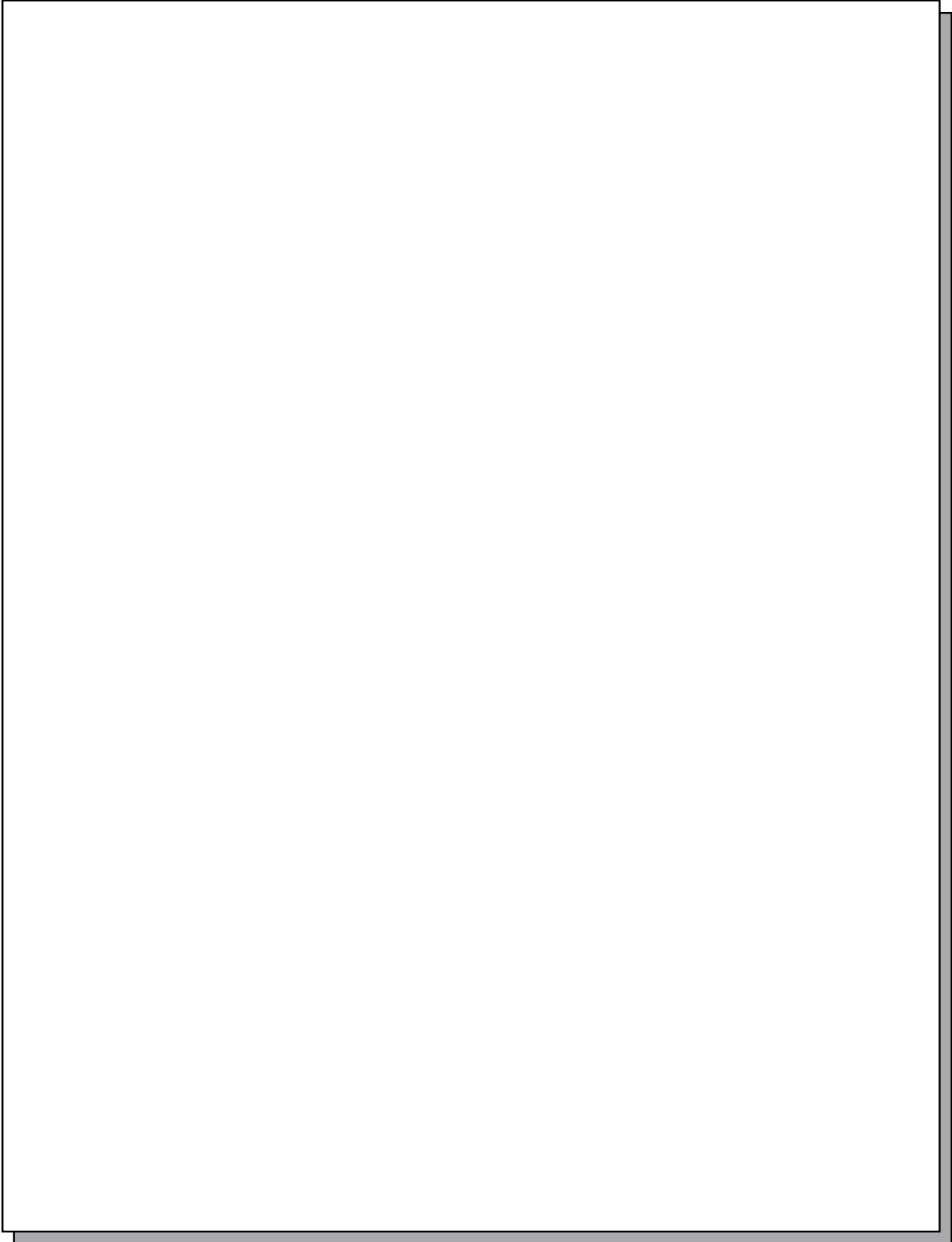


Exhibit 2-18. SF 1447, Solicitation/Contract

THE SOLICITATION

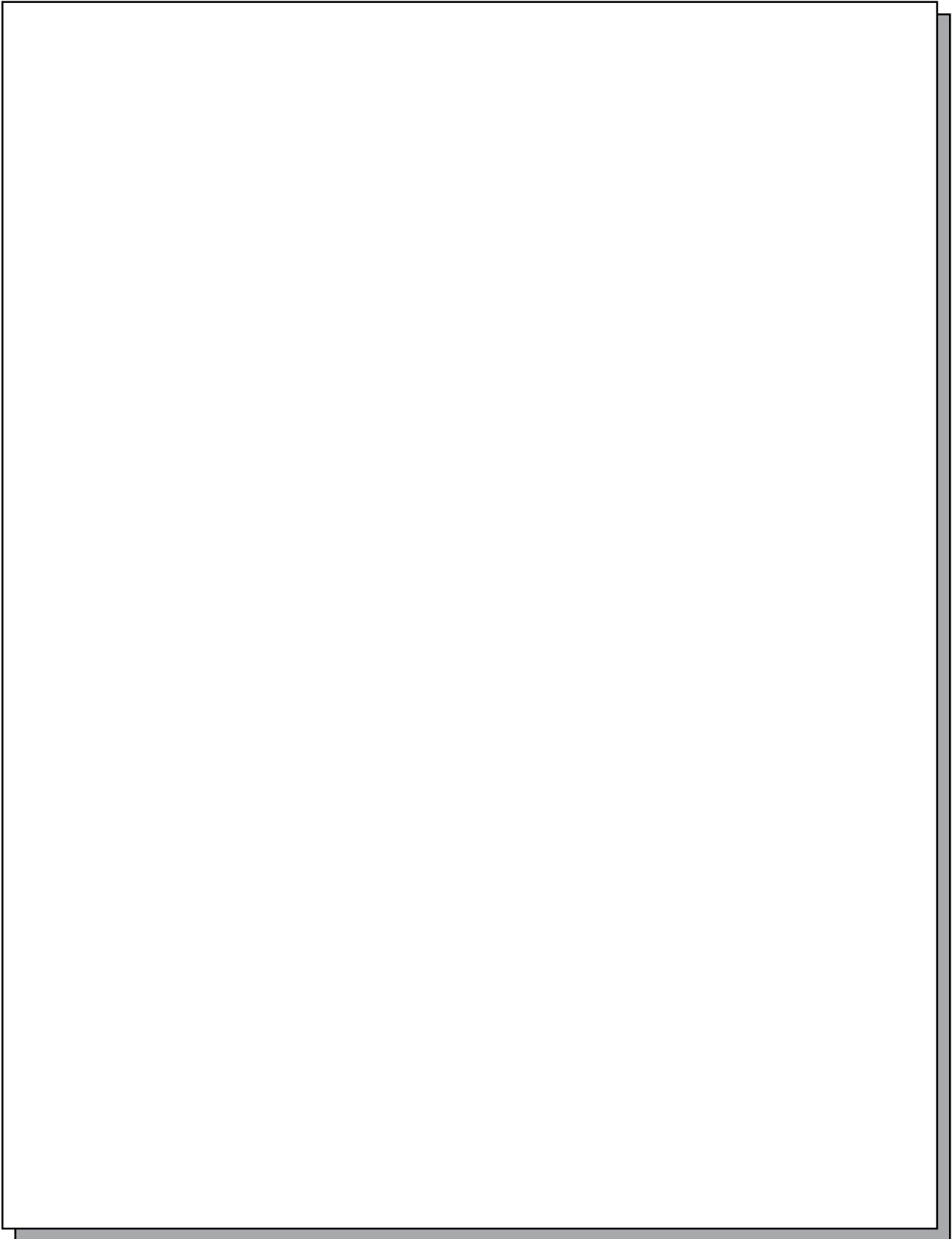


Exhibit 2-19 SF 1447, Solicitation/Contract Back

2.5 OBTAIN APPROVALS

Before issuing the IFB, you may need to obtain legal, requiring activity, technical, or management concurrence. You should give the IFB to the CO, who is responsible for the final review of the package. The purpose of the review is to detect and correct discrepancies or ambiguities that could restrict competition or result in the receipt of a nonresponsive bid.

The CO will review items such as the following:

- All prescribed clauses and provisions that have been included.
- Any fill-ins or blanks that need to be completed (e.g., the number of required copies to be shown on line 9 of SF 33).
- Any required approvals or clearances needed.

Concurrence requirements vary from agency to agency and may take effect at differing dollar thresholds. However, to illustrate this point, a few examples are shown below:

FAR 14.202-5(e)(2)

- If a federal, military, or other formal specification is incorporated in the IFB, and the specification requires that bidders furnish descriptive literature, then the CO may include a statement in the IFB waiving such requirement. This applies only if such a waiver has been authorized by the requiring activity.

FAR 19.505

- If the CO rejects the recommendation of a small business Procurement Center Representative (PCR) that a procurement be set-aside for small business, the CO must notify the PCR. If the PCR appeals the decision, the CO should not proceed with the procurement until a final decision is rendered.
- In many contracting activities, solicitation documents at prescribed dollar thresholds must be reviewed by a counsel to ensure legal sufficiency.

CHAPTER 3

PUBLICIZING

SYNOPSIS: A 17-ITEM FORMAT

*U.S. Department of Commerce
Commerce Business Daily
Post Office Box 5999
Chicago, IL 60680*

- 1. P!!*
- 2. 0925!!*
- 3. 85!!*
- 4. 57936!!*
- 5. 19111-5096!!*
- 6. 95!!*
- 7. Defense Industrial Supply Center, 700 Robins Ave., Philadelphia, PA 19111-5096!!*
- 8. 95—metal plate steel!!*
- 9. DLA500-86-B-0090!!*
- 10. BOD, 111585!!*
- 11. Contact, Mary Drake, 215/697-XXXX/Contracting Officer, Larry Bird, 215/697-XXXX!!*
- 12. N/A!!*
- 13. N/A!!*
- 14. N/A!!*
- 15. N/A!!*
- 16. N/A!!*
- 17. 95—Metal plate steel carbon,—NSN9515—00-237-5342,—Spec MIL-S-226988,—0.1875 in thk, 96 in w. 240 in lg.—Carbon steel.—45,000 lbs.—Del to NSY Philadelphia, PA, NSC Norfolk, VA.—Del by 1 Oct 86.—When calling, be prepared to state name, address and solicitation number.—See note 9.—All responsible sources may submit an offer which will be considered. ******

To the untrained eye, this 17-step outline may not make sense, but most contracting personnel will immediately recognize it (even though normally it is double-spaced between format items) as the format used to prepare synopses for the Commerce Business Daily (CBD). Synopsizing a proposed contract action in the CBD is one of several methods used to publicize the fact that you are seeking bidders to respond to your IFB.

LEARNING OBJECTIVES

At the completion of this course, you will be able to:

Overall: Select and implement the method of publicizing the proposed procurement and respond to inquiries concerning solicitations.

Individual:

1. Publicize an IFB/Award
 - Determine the need for synthesizing an IFB/Award.
 - Identify whether an exception to the synopsis requirement applies.
 - Prepare a synopsis.
 - Forward a synopsis.
2. Respond to verbal inquiries
 - State and describe information about the procurement that may not be divulged.
 - State what to do in responding to a verbal inquiry.

Exhibit 3-1. Learning Objectives.

CHAPTER INTRODUCTION FOR PART I OF CHAPTER 3

Why Publicize?

FAR 5.002

Contract actions are publicized in order to:

- Increase competition
- Broaden industry participation in meeting Government requirements; and
- Assist small business concerns, disadvantaged business concerns, and labor surplus area concerns in obtaining contracts and subcontracts.

What is a Synopsis?

A condensed statement of an agency's proposed contract action or an announcement of a contract award which is publicized in the Commerce Business Daily (CBD).

What is the CBD?

FAR 5.101

The CBD is the public notification media in which U.S. Government agencies identify proposed contract actions and contract awards. The CBD is published by the U.S. Department of Commerce in five or six daily editions per week, as necessary.

Other Methods of Publicizing

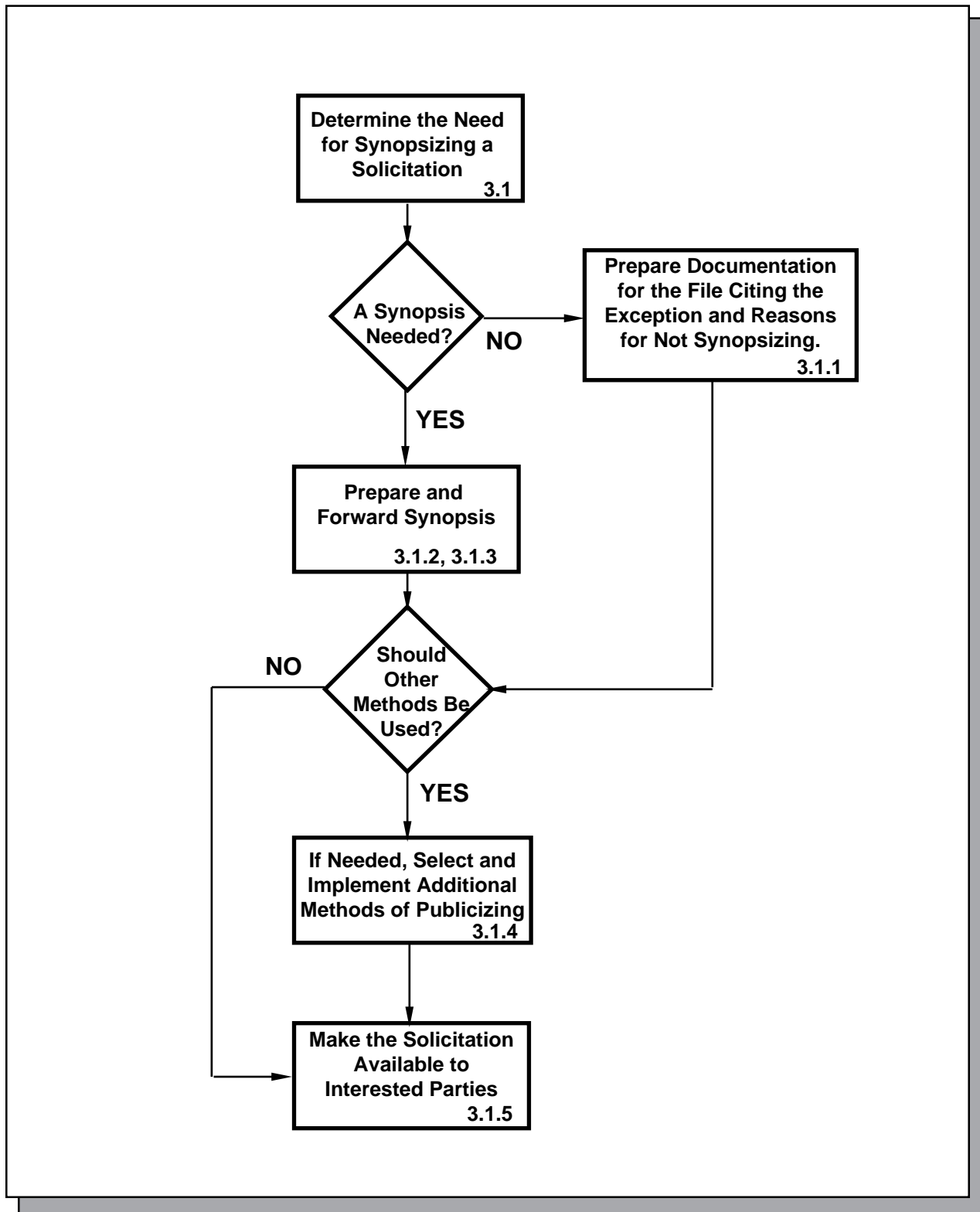
FAR 5.101(b)

In addition to synopsisizing in the CBD, there are several other methods used for publicizing proposed contract actions, such as print and electronic media.

Steps in Publicizing IFBs

The steps in publicizing IFBs are charted on the next page. Following the flowchart, each step is discussed in turn.

The second part of this chapter (Responding to Preaward Inquiries) also will have a similar step-by-step process flowchart and introduction.



STEPS IN PUBLICIZING BIDS

3.1 DETERMINING THE NEED TO SYNOPSISIZE

A synopsis is a condensed statement of an agency's proposed contract action. It is published in the Commerce Business Daily (CBD) and used to announce IFBs and contract awards.

Exhibit 3-3 lists the circumstances under which the synopsis of a proposed contract action is required.

CIRCUMSTANCES UNDER WHICH A SYNOPSIS IS REQUIRED

FAR 5.201 (b)

If the proposed contract action:

- Is expected to exceed \$25,000
- Is for a modification of an existing contract for additional supplies or services and the proposed modification exceeds \$25,000.
- Is an effort to locate private commercial sources for cost comparison purposes under OMB Circular A-76.
- Is any dollar amount and it would be advantageous to the Government to synopsimize in the CBD.

Exhibit 3-3. Conditions for Synopsizing.

Note: Proposed contract actions expected to exceed \$10,000 and there is not a reasonable expectation that at least two bids will be received from responsive and responsible bidders no longer require synopsizing in the Commerce Business Daily.

PUBLICIZING

3.1.1 Exceptions to Synopsizing

FAR 5.202

Even though the circumstances that require synopsizing may exist, there are several exceptions to the requirements for synopsizing. Most of the exceptions apply only to negotiated procurements; however, the following exceptions may apply to sealed bidding:

- When synopsizing might disclose classified information.
- When the requirement is for perishable subsistence supplies, and advance notice is not appropriate.
- When the requirement is for a brand-name commercial item for authorized resale.
- When the action is made under the terms of an existing contract that was previously synopsized in sufficient detail to comply with the correct procedure for synopsizing.
- When the action is by a defense agency and the contract action will be made and performed outside the U.S., its possessions, or Puerto Rico, and only local sources will be solicited.
- Unusual and compelling urgency

In addition to the above exceptions, the head of an agency can make the decision that advance notice is not appropriate or reasonable, after consulting with OFPP and SBA. The use of any of these exceptions must be documented in the contract file.

3.1.2 Prepare the Synopsis

| |
|-----------|
| FAR 5.207 |
|-----------|

General guidelines for preparing a synopsis are as follows:

- Use conventional typing with abbreviations, capitalization, and punctuation all grammatically correct.
- Each synopsis shall include all 17 format items. Do not include the title for the format item.
- Begin each line flush left and use double-spaced lines between each format item. If more than one synopsis is to be sent at one time, separate each synopsis with four line spaces and begin each synopsis with format item number 1.
- Minimize abbreviations or acronyms to only those most commonly recognized.

If you are telecommunicating the synopsis, the hard copy and electronic copy should follow an identical sequence and form, even though the typing style (i.e., font) will be different for the telecommunicated synopsis.

PUBLICIZING

3.1.2.1 Format Items

General guidelines for the formatting all 17 items are:

- A new line of text is used for each format item.
- Precede each format item with the number of the item followed by a period (e.g., 1.).
- Following the period, there must be two spaces before beginning the entry.
- Next type the appropriate information for each format item.
- Conclude each format item with two exclamation points (e.g., !!).

Other guidelines include:

- When a format item is inapplicable (i.e., some items are pertinent only to solicitations and some are pertinent only to awards), leave two spaces after the item number period and type “N/A.”
- Conclude each complete synopsis, following item 17, with 5 asterisks (e.g., *****).

Exhibit 3-4 shows a an example of the 17-item synopsis.

EXAMPLE OF THE 17-ITEM SYNOPSIS

- | | |
|---|---|
| 1. Action Code | 1. P!! |
| 2. Date | 2. 0925!! |
| 3. Year | 3. 85!! |
| 4. Federal Information Processing Standard (FIPS) Number | 4. 57936!! |
| 5. Contracting Office Zip Code | 5. 19111-5096!! |
| 6. Classification Code | 6. 95!! |
| 7. Contracting Office Address | 7. Defense Industrial Supply Center, 700 Robins Ave., Philadelphia, PA 19111-5096!! |
| 8. Subject | 8. 95—metal plate steel!! |
| 9. Proposed Solicitation Number | 9. DLA500-86-B-0090!! |
| 10. Opening/Closing Response Date | 10. BOD, 111585!! |
| 11. Contact Point/Contracting Officer | 11. Contact, Mary Drake, 215/697-XXXX/Contracting Officer, Larry Bird, 215/697-XXXX!! |
| 12. Contract Award and Solicitation Number | 12. N/A!! |
| 13. Contract Award Dollar Amount | 13. N/A!! |
| 14. Contract Line Item Number | 14. N/A!! |
| 15. Contract Award Date | 15. N/A!! |
| 16. Contractor | 16. N/A!! |
| 17. Description | 17. 95—Metal plate steel carbon, —NSN9515—00-237-5342,—Spec MIL-S-226988,—0.1875 in thk, 96 in w. 240 in lg.—Carbon steel.—45,000 lbs.—Del to NSY Philadelphia, PA, NSC Norfolk, VA.—Del by 1 Oct 86.—When calling, be prepared to state name, address and solicitation number. —See note 9.—All responsible sources may submit an offer which will be considered. ***** |

*Exhibit 3-4. Example of the 17-Item Synopsis Format.
[VG 3-6]*

PUBLICIZING

There follows a brief explanation of each of the 17 items in the synopsis format.

1. ACTION CODE

Description: A single alphabetic letter denoting the specific action related in the synopsis.

Application: Choices are limited to the following:

- P = Pre-solicitation Notice/Procurement
- A = Award Announcement
- M = Modification of a previously announced procurement action
- R = Sources Sought (includes A-76 services and architect-engineer contracts)
- F = Foreign Procurement Announcement or Tender

2. DATE

Description: Date the synopsis is transmitted to the CBD for publication.

Application:

- Use a four-digit number indicating month in two digits and date in two digits (MMDD).
- All four spaces must be used with preceding 0 for months January through September (e.g., 0502 for May 2).

3. YEAR

Description: Two numeric digits denoting the calendar year of the synopsis.

Application: Use the last two digits of the year (e.g., 87 for 1987).

4. FEDERAL INFORMATION PROCESSING STANDARD (FIPS) NUMBER

Description: Agency code number identifying the sending agency.

Application:

- Normally a four or five character field.
- Usually numeric, but may contain one or more alphabetic characters.
- Reference: FIPS publication 95, National Bureau of Standards. This publication identifies federal agencies and related organizations.

**5. CONTRACTING
OFFICE ZIP CODE**

Description: Geographic zip code for the contracting office.

Application: • Up to nine characters may be entered.
• When using nine digit zip codes, separate the first five digits and last four digits with a dash (e.g., 00000-0000).

**6. CLASSIFICA-
TION CODE**

Description: Classification code number (see FAR 5.207(g) for codes).

Application: • Each synopsis should classify the services or supplies under one grouping.
• If the action is for a multiplicity of goods and/or services, the preparer should group the action under the category best defining the overall acquisition based upon value.
• Synopsis will be rejected if no code or more than one code is provided

**7. CONTRACTING
OFFICE ADDRESS**

Description: The complete name and address of the contracting office.

Application: Field length is open, but generally not expected to exceed 90 alpha-numeric characters.

8. SUBJECT

Description: A brief (up to 200 character spaces) title description of services, supplies, or projects required by the agency.

Application: Insert classification code for Item 6 and the brief title.

Explanation: This will appear in the CBD as the bold-faced title in the first line of Item 17, the description.

**9. PROPOSED
SOLICITATION
NUMBER**

Description: Agency number for control, tracking, and identification.

Explanation: For solicitations only; if not a solicitation, enter N/A.

PUBLICIZING

10. OPENING/CLOSING RESPONSE DATE

Description: Issuing agency's deadline for receipt of bids, proposals, or responses.

Application: Use a six-digit date (e.g., MMDDYY).

Explanation:

- Explanation may appear in text of synopsis in Item 17.
- For solicitations only; if not a solicitation, enter N/A.

11. CONTACT POINT/CONTRACTING OFFICER

Description:

- Includes name and telephone number of contact.
- Also includes name and telephone number of CO if different.

Application:

- This entry may be alpha-numeric and up to 320 character blocks.

12. CONTRACT AWARD AND SOLICITATION NUMBER

Description: The award, solicitation, or project reference number assigned by the agency to provide a reference for bidders/subcontractors.

Application: This entry may be alpha-numeric and up to 72 character blocks, plus slashes and dashes.

Explanation: For awards only; if not an award, enter N/A.

13. CONTRACT AWARD DOLLAR AMOUNT

Description: The actual award amount for the contract.

Application:

- A ten-digit numeric field.
- Enter whole dollars only.

Explanation:

- For awards only; if not an award, enter N/A.
- Output will be preceded by a dollar sign (\$)

**14. CONTRACT
LINE ITEM
NUMBER**

Description: A “line item number” is an identifying number for an item of supply or service specified in the IFB for which the bidder must bid or propose a price.

Application: Use alpha-numeric characters with dashes and slashes. Character field not to exceed 32 spaces.

Explanation:

- For awards—as desired only; if not an award, enter N/A.
- If sufficient space is not available, enter N/A and insert the contract line item number(s) in format item 17.

**15. CONTRACT
AWARD DATE**

Description: This item shows the date the award is made.

Application: Use a six-digit entry (e.g., MMDDYY).

Explanation: For awards only; if not an award, enter N/A.

16. CONTRACTOR

Description: Name and address of successful bidder.

Application: Ninety character spaces are allowed for full identification.

Explanation: For awards only; if not an award, enter N/A.

17. DESCRIPTION

Description: This block of space is open-ended for entry of the substantive description of the contract action.

Application: See 3.1.2.2

PUBLICIZING

3.1.2.2 Application of Format Item 17

In preparing a synopsis for an IFB, the CO must ensure that Item 17—DESCRIPTION includes a clear description of the supplies or services to be acquired. In addition, the description must not restrict competition. It should allow a prospective bidder to judge whether a copy of the IFB should be requested. It should also include the following, to the extent applicable, in sequence, with each element separated by two hyphens:

| | |--------------| | FAR 5.207(c) | |--------------|

- Name of supply/service.
- National Stock Number (NSN), if assigned.
- Specification and whether a bidder, its product, or service must:
 - Meet a qualification requirement in order to be eligible for award, and
 - Identify the office from which additional information about the qualification requirement may be obtained.
- Manufacturer, including part number, drawing number, etc.
- Size, dimensions, or other form, fit, or functional description.
- Predominant material of manufacture.
- Quantity, including any options for additional quantities.
- Unit of issue.
- Destination information.
- Delivery schedule.
- Duration of contract period, including any option periods if CO anticipates that option will be exercised.
- Machine number and routing instructions for alternate means of accepting requests for solicitations (e. g., facsimile machine, Telex).

- Brief details with respect to: location, scope of services required, cost range and limitations, type of contract, estimated starting and completion dates, and any significant evaluation factors for architect/engineer projects and other projects for which the supply or service codes are insufficient.
- Numbered notes (see Section 3.1.2.3).
- When applicable, insert a statement justifying other than full and open competition, and identify the intended source(s).
- Insert a statement that all responsible sources may submit a bid, proposal, or quotation, which shall be considered by the agency.
- Provide the machine number and routing instructions when alternate means (facsimile, telex, etc.) are authorized.

If the proposed acquisition provides for a total small business or labor surplus area set-aside, state the following in the synopsis under Item 17:

“The proposed contract listed here is a 100-percent small business (or labor surplus area) set-aside.”

If the proposed contract is a partial set-aside, state the following:

“An additional quantity of _____ is being reserved for _____ [insert small business or labor surplus area as appropriate] concerns under a partial determination.”

3.1.2.3 Numbered Notes

In addition to the information required in Item 17, you may have to cite a Numbered Note (i.e., footnote) at the end of the synopsis. A Numbered Note is used to describe:

FAR 5.207(e)

- How to respond to the synopsis of a proposed contract.
- The qualifications a prospective contractor must have to be considered for an award.
- Instructions for small business or labor surplus area set asides
- Sole source award (Numbered Note 22)
- Trade Agreements Act of 1979 (Numbered Note 12)

PUBLICIZING

The first issue of the CBD each week lists all current “Numbered Notes.” When one or more of the Notes applies to a synopsis, the CO should reference the note at the end of Item 17 of the synopsis (e.g., “See Note(s) ____.”). New Notes may be added to the list only when they apply to more than one agency.

3.1.2.4 Synopses for Awards

FAR 5.3

In preparing a synopsis for awards, fill in all format items. Fill in Items 9 and 10 using “N/A.” Item 17 should include the following FAR considerations when relevant:

- The details concerning F.O.B. destination when total shipments from origin to destination will exceed 200,000 pounds and destinations are firm, such as origin when different from the address of the contractor; destination of shipment in continental U.S. and scheduled delivery period.
- A statement of the industries, crafts, processes, or component items for which subcontractors are desired in a geographic area indicated by the contractor. Include this information when requested by the prime contractor.

For more information on the criteria for writing a synopsis for awards, see Chapter 8 of this text.

3.1.3 Forward the Synopsis

In forwarding a synopsis to the CBD, you should:

- Transmit by electronic means whenever feasible.
- Transmit electronically using ASCII Code.
- Contact your agency’s communication center for the appropriate transmission instructions or services.

When electronic transmission is not feasible, send synopses to the CBD via mail or other physical delivery of hard copy; address it to:

U.S. Department of Commerce
Commerce Business Daily
P.O. Box 5999
Chicago, IL 60680

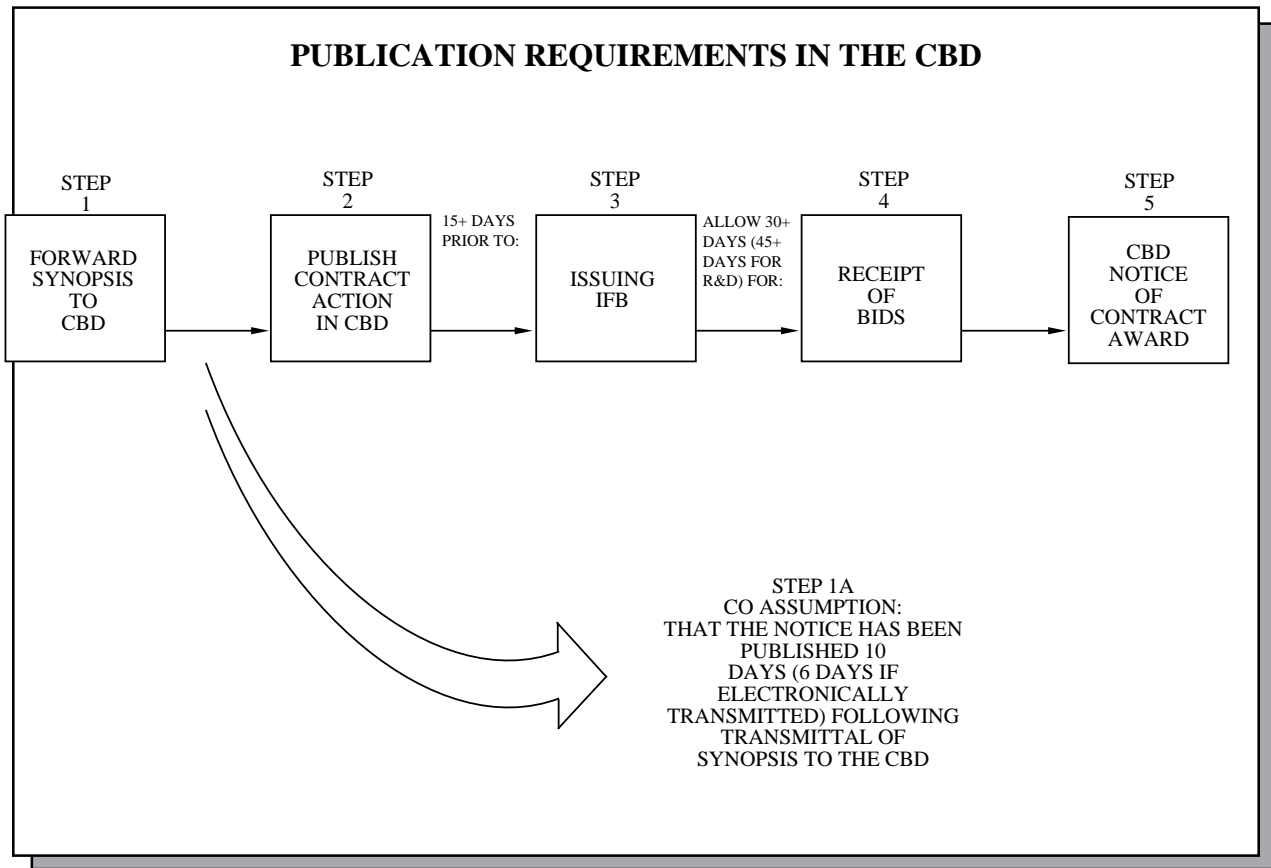


Exhibit 3-5. Publication Requirements Time Line.

Step 1: The synopsis, if required for the solicitation, is sent to the CBD.

Step 1A: COs may, unless there is evidence to the contrary, assume that notice has been published 10 days (6 days if electronically transmitted) following transmittal of the synopsis to the CBD. This assumption is based on the CBD's confirmation that publication does occur within these time frames.



PUBLICIZING

If by chance a notice has not been published within these time frames, the CO should consider whether the date for receipt of bids can be extended or whether circumstances are sufficiently compelling to justify proceeding with the contract action.

FAR 5.203(a)

Step 2: The synopsis must be published in the CBD at least 15 days prior to the issuance of the IFB.

Step 3: Fifteen days after the synopsis has been published in the CBD, you can issue the IFB to any interested parties.

FAR 5.203(b)

Step 4: After the IFB is issued, agencies shall allow at least 30 days response time for receipt of bids.

Other situations:

FAR 5.203(c)

- Agencies shall allow at least 30 days response time from the date of the published notice of intent to contract for architect-engineer services or before issuance of an order under a basic ordering agreement or similar arrangement.

FAR 5.203(d)

- Agencies shall allow at least 45 days response time for receipt of bids from the date of the published notice required in FAR 5.201 for contract actions categorized as research and development.

(Note, however, that contracts for A&E and R&D are not ordinarily entered into by sealed bidding.)

Step 5: After bids have been opened, evaluated, and the contract awarded, you must synopsise such award in the CBD if:

- The award exceeds \$25,000, and subcontracting opportunities are likely to result from the award.
- Awards at lower dollar amounts may be publicized if it would be advantageous to industry or the Government to do so.
- Award shall be made by mailing or otherwise furnishing a properly executed award document to the successful bidder.

Exhibit 3-6 illustrates how to use a calendar to determine the amount of time to allow in publicizing the contract.

1989
TIME REQUIREMENTS USING A CALENDER

FEBRUARY

| S | M | T | W | T | F | S |
|----|----|----|----|----|----|----|
| | | | 1 | 2 | 3 | 4 |
| 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| 12 | 13 | 14 | 15 | 16 | 17 | 18 |
| 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 26 | 27 | 28 | | | | |

MARCH

| S | M | T | W | T | F | S |
|----|----|----|----|----|----|----|
| | | | 1 | 2 | 3 | 4 |
| 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| 12 | 13 | 14 | 15 | 16 | 17 | 18 |
| 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 26 | 27 | 28 | 29 | 30 | 31 | |

Feb 1: Send synopsis to CBD by electronic means.

Feb 7: CO can assume that the synopsis has been published in the CBD.
(Start 15 day count.)

Feb 22: Issue the IFB.

Mar 24: Bid opening date and due date for receipt of bids.

Exhibit 3-6. Time Requirements Using a Calender.

The time requirements illustrated are minimum times. When planning your time for receipt and opening of bids, be sure that the opening date does not fall on a non-workday (i.e., weekend/ holiday). Also, when appropriate, attempt to allow more than 30 days response time for receipt of bids. That will give prospective contractors more time to prepare their bids, possibly resulting in more competition and lower prices.

PUBLICIZING

3.1.4. Publicizing the Requirement By Other Methods

FAR Subpart 5.5

Other methods of publicizing IFBs may include:

- Preparing periodic handouts that list proposed contracts and displaying them in a public place at the contract office. This requirement is mandated for contract actions between \$10,000 and \$25,000.
- Assisting local trade associations in disseminating information to their members.
- Making brief announcements of proposed contracts to newspapers, trade journals, magazines, or other communications media for publication without cost to the Government.
- Using paid advertisements.
- If required by agency regulations, posting a copy of the IFB in a public place (but not before the issue date). A public place would include the contracting activity's bulletin board, bid room, or business service center.

When considering whether or not to use other methods of publicizing contract actions, recall the introduction to this chapter. Your objective is to “get the word out” that you have a requirement to fulfill for your agency, and to do that in a timely cost-effective manner. Therefore, assess these factors to help you determine what additional publicizing is necessary or appropriate:

- The extent to which you need to increase competition,
- The dollar value of the contract action, and
- The importance of the action.

3.1.4.1. Implementing Other Methods of Publicizing

The procedures to use with the other methods of publicizing that are listed under 3.1.4 are as follows:

- Preparing periodic handouts. This method relies upon the technical or requirements organizations having adequate acquisition plans. By reviewing those plans, you can, or they can, prepare a listing of anticipated needs for, perhaps, the next fiscal quarter or year. The handout is not an invitation and does not negate the need to synopses in the CBD. This method is useful when you anticipate repetitive buys of the same or similar items because the prospective contractor may plan ahead to fulfill your needs—perhaps at lower prices.
- Assisting local trade associations. Often, one of the functions of a trade association is to assist members in getting new business. If you are not getting as much competition as you believe is desirable (e.g., building maintenance), check to see if there is an Association of Building Maintenance Contractors (the Association may have already contacted you). If so, they might give you names for your mailing list or offer to publish your IFB announcement in their trade journal free of charge.
- Making brief announcements in newspapers, etc. Some of the more aggressive publications contact procuring activities and volunteer to publish notices of IFBs free of charge. Or, you may make the contact and ask them to publish notices, free of charge. Your agency's public affairs office might be of assistance.
- Paid advertisements. You will rarely need to use paid advertisements in order to boost competition unless you are selling rather than buying. For example, GSA places paid advertisements to announce the sale of surplus property. This is necessary because the sales are to the public in general and CBD notices and solicitation mailing lists will not reach prospective buyers. In the event, however, that you decide to use paid advertisements, you will need a contract or delivery order to pay for the advertising and accompanying art work, if any. The FAR contains definite instructions on the use of paid advertising at 5.5.

PUBLICIZING

- If required by agency regulations. This is similar to the use noted in the first bullet. While the coverage at FAR 5.101(a)(2) is designed for small purchases, you shall use those same procedures for large purchases if required by agency regulations to do so.

3.1.5 Make the Solicitation Available to Interested Parties (Issue the IFB)

After the IFB has been prepared and reviewed for accuracy and completeness, you should initiate the process for release of the IFB. A summary of the steps to be taken in that process are listed below.

- Prepare the synopsis (see Section 3.1.2).
- Forward the synopsis to the U.S. Department of Commerce (see Section 3.1.3) (NOTE: It is possible to expedite this process by releasing the synopsis prior to final preparation of the IFB).
- Hold the IFB and do not release it until 15 days after the synopsis (notice) has been published in the CBD.
- Fifteen days after the notice has been published in the CBD (and expiration of the 6/10 day period), release the IFB:
 - To those prospective bidders who have requested it as a result of having read the CBD notice,
 - To those firms who are on your solicitation mailing list, including other public agencies, and
 - To those firms who request it as a result of other publicizing actions or simply because they know about it and ask for a copy of the IFB.
- Maintain a reasonable number of copies of the IFB so that, upon request, potential sources not initially solicited can be mailed or provided copies of the IFB.
- Ensure that IFBs involving classified information are handled as prescribed by agency regulations.
- If the contracting office is located in the United States and the security classification permits, send IFBs and related correspondence to foreign addresses by international air mail.

FAR 14.205

3.1.5.1. The IFB — How Many Copies?

Determining the number of copies of an IFB that may be needed will take some thought on your part. The demand for copies might run from a very few (10-20 copies) to many (40-60 copies, or more). To help determine how many copies to prepare, you should consider several factors:

- Historical data as to the response on previous purchases of the same or similar items.
- The number of names to be used from the Solicitation Mailing List.
- The dollar value of the proposed contract.
- The time allowed for submission of bids.
- Any geographical limitation (such as labor surplus area) in IFB.
- The extent to which you have used, in addition to the CBD, other methods of publicizing.
- Limitations, such as a small business or labor surplus area set-aside.
- The number needed for internal and file copies and those needed for making award.
- The number to be mailed out to each bidder, (i.e. for submission of original and 1 or 2 copies of bid).

You are required to maintain a reasonable number of copies so that you can promptly fill your planned needs as well as a reasonable number of additional requests. The rules pertaining to the availability of IFBs are at FAR 5.102 and provide that, in addition to your anticipated requirements you should:

- Provide copies on a “first-come-first-served” basis for pickup at your contracting office. Those copies are generally for the benefit of publishers, trade associations, information services, and other members of the public that have a legitimate interest in the procurement. If the procurement is for construction, you may make additional distribution as specified at FAR 36.211.
- Retain a copy of the IFB for review by and duplication for those requesting copies after the initial quantity is exhausted. You are allowed to charge a fee for these copies, not exceeding the actual cost of duplication.

PUBLICIZING

CHAPTER INTRODUCTION FOR PART II OF CHAPTER 3

What are Preaward Inquiries?

Preaward inquiries are questions and comments from prospective bidders on publicized proposed contract actions before issuance of the IFB or on ambiguous specifications, terms and/or conditions in the IFB.

In order to sustain the credibility of the sealed bidding process, you must ensure:

- That all prospective contractors are treated equally,
- That all prospective contractors are bidding on an equal footing, and
- That no one prospective contractor is given a competitive advantage over any other prospective contractor.

Therefore, for the reasons cited above, the IFB is the only “official” method for communicating with a prospective contractor relative to a proposed contract to be awarded by sealed bidding — the use of pre-solicitation notices, pre-bid conferences, or site visits being the only acceptable exceptions.

Past experience has shown that the undisciplined response to inquiries received can and does result in undermining the sealed bidding process and often results in protests alleging unfair treatment. (See Chapter 9 relative to protests.)

Steps in Responding to Preaward Inquiries

The steps in responding to preaward inquiries are charted on the next page. Following the flowchart, each step is discussed in turn.

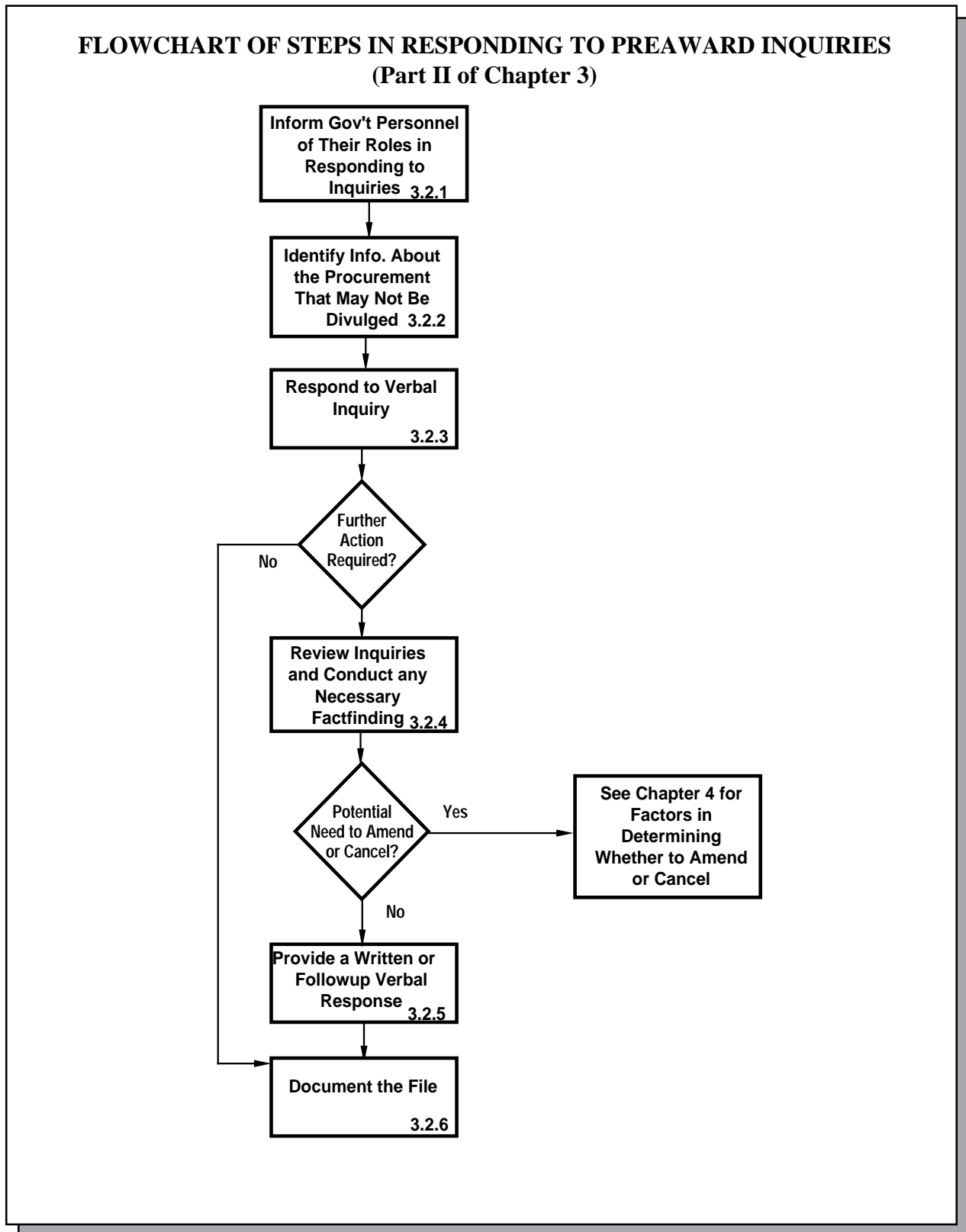


Exhibit 3-7. Flowchart of Steps in Part II of Chapter 3.

STEPS IN RESPONDING TO PREAWARD INQUIRIES

3.2 RESPOND TO PREAWARD INQUIRIES

3.2.1 Identify Who May Answer the Inquiries and What They May Say

1. The CO.
2. Others specifically authorized to do so may communicate with or furnish information to prospective contractors concerning a proposed acquisition.
3. You, as a contract specialist acting on behalf of the CO, are authorized to release such information.
4. You should make it clear to persons in your organization that any inquiries, either oral or written, that are received from prospective bidders or others should be referred to you for appropriate action. Caution such persons against furnishing any information that alone or together with other information might afford any one prospective contractor a competitive advantage over another prospective contractor.
5. It is quite likely, however, that you will have to obtain information from the cognizant requirements or technical personnel for use in responding to inquiries if, in fact, it is appropriate to divulge the information requested in the inquiry.

Some inquiries do not pertain to the substance of the IFB and may be answered without prejudice to other prospective contractors. You must exercise the utmost care and judgment when deciding whether or not to answer what you believe is a “harmless” inquiry. The test to apply is simply: “Is this general information, the release of which will not be prejudicial to other prospective bidders?” Some examples of general information “which would **not** require an amendment to the IFB” are included at Exhibit 3-8.

GENERAL INFORMATION THAT CAN BE RELEASED

- Explaining the meaning of a standard clause or provision
- Directions to the bid opening location
- Where to obtain copies of specifications
- Who can attend the bid opening

Exhibit 3-8. General Information That Can Be Released.

There is no way to predict the questions you might be asked; therefore, apply the test or ask the CO for guidance. If in doubt, ask the CO. The following subsections discuss other situations concerning preaward inquiries, both before and after the IFB is issued.

3.2.1.1 Information Released Before the IFB Is Issued

FAR 14.211(a)

FAR 14.205-4(c)

Normally, the preaward inquiries that you are most concerned about are those that occur after you release the IFB. However, for some acquisitions (or a program or series of acquisitions) agencies find it useful to release limited information before the IFB is released. The authorized methods for releasing acquisition information prior to the IFB are:

- When pre-solicitation notices are used as prescribed in FAR. A presolicitation notice is useful when bid sets are large and expensive. The notice gives information that bidders can use to determine whether or not they want to request a bid set when the IFB is released. This procedure is particularly suitable when solicitation mailing lists are lengthy.
- When publicizing long-range acquisition requirements that will assist industry planning and that include locating additional sources of supply.
- When pre-solicitation notices are used in connection with construction contracts expected to equal or exceed \$100,000 (see FAR 36.302), and when synopsizing in accordance with FAR 5.201.

Inquiries that result from the above types of releases are usually more general in nature and do not involve “preferential” information. Within the government, acquisition information shall be restricted to those having a legitimate interest or a need-to-know.

3.2.1.2 Information Released After the IFB is Issued (But Before Bid Opening)

After you have issued the IFB, it is quite likely that you will receive inquiries about various aspects of the IFB. Some of these inquiries may come directly to you and some may be referred to you by the requirements or technical personnel. These inquiries will relate specifically to the IFB and must be carefully considered.

FAR 14.211(b)

3.2.2 Identify Information That May Not Be Divulged

Information which should not be disclosed is included at Exhibit 3-9.

INFORMATION NOT TO BE RELEASED

- Additional information relative to the Statement of Work or a specification
- Clarification of a requirement or interpretation of an alleged ambiguity
- An opinion of whether an alternate item will be acceptable.
- Proprietary data per FAR 14.404-4
- Government Cost Estimate
- Information on a bidder’s responsibility per FAR 9.105-3
- Number and names of bidders

Exhibit 3-9. Information Not To Be Released.

PUBLICIZING

If answering any of these inquiries would appear to give the inquirers any insight or knowledge that the other prospective contractors do not have, you should not answer the inquiry.

When you are considering how to answer an inquiry, ask yourself whether or not the information requested is essential to understanding the IFB or whether it is just “good-to-know” information that would help the inquirer to prepare a more competitive bid. If it is the latter, do not give an answer. A simple, polite response to the latter inquiry is that: “We do not believe the information requested is essential to the preparation of a responsive bid.”

Other bases for formal or informal communications between the CO and the bidder may exist in any given IFB. In all cases, the objective of the CO should be to ensure that no information is revealed which creates a preference for a particular bidder or prejudices any of the competitors.

3.2.2.1 Freedom of Information Act

FAR 24.2

Generally, you will find that the information in this Part II of Chapter 3 and Part 24 in the FAR give adequate guidance as to how to respond to preaward inquiries. However, you may receive requests for information based on the Freedom of Information Act (FOIA).

You might receive a request for information that is based on the requester’s opinion that this information can be obtained under FOIA even though it might not be obtainable under the FAR. Because the FOIA is complex and might be interpreted somewhat differently by executive agencies, you should:

1. Refer to your agency’s FAR Supplement for guidance in responding to a request for information under the FOIA, and
2. Refer the request to the officials in your agency that have FOIA responsibility.
3. If you are uncertain as to whom to refer the request to, consult with your legal department.

3.2.3 Respond to Inquiries Received

The inquiry that you receive may be written or verbal. The way you respond will be influenced by the nature of the inquiry and by the time remaining until the date set for bid opening. If the inquiry pertains to general information as discussed in Section 3.2.1.1 above, you may respond in the way most convenient to you (i.e., a letter or phone call).

A frequent inquiry is whether or not you can extend the bid opening date. Ask why more time is needed. If the answer is that the inquirer is very busy and needs more time, or the IFB was overlooked for several days, or the vendors have been too slow with their quotes, or other reasons revolving around the inquirer's ability to respond, your answer should be something like: "No. We believe we have allowed sufficient time, we must meet the acquisition schedule, and the other prospective contractors have not requested more time."

If, however, the inquirer alleges that the work is complex, bid preparation will take more than the minimum time, and that the incumbent or previous contractor has an unfair advantage, you should delay your answer, consult with the CO, then decide how to respond to the inquiry.

3.2.4 Review the Inquiry and Conduct Necessary Factfinding

If the inquiry involves more than general information, you will most likely have to do some factfinding in order to respond. The fact that you have to do some research might indicate that you will not provide the information to only the person who made the inquiry. Obtain the necessary information from the technical or requirements personnel, consult with the CO or legal staff as necessary, and determine the appropriate response.

If answering any of these inquiries would appear to give the inquirer any insight or knowledge that the other prospective contractors do not have, you should not answer the inquiry. However, if any such inquiries lead to a finding that the IFB is deficient as written, consideration should be given to amending or cancelling the IFB (See Chapter 4).

PUBLICIZING

3.2.5 Provide a Follow-up Response

After you have obtained the information necessary to respond to the inquiry, apply “the test” to determine whether or not the information should be provided to all parties issued an IFB. If, for example, the inquiry involves the clarification of a specification, you should take the following action:

- Consult the technical or requirements personnel regarding the clarification needed (if any).
- If it is determined that no clarification is necessary, so notify the inquirer and document the file.
- If a clarification is necessary, put the question asked and the answer given in writing. Send all parties issued an IFB a copy of that document.
- If time is of the essence (the bid opening date is near) give oral notification to all, followed by a written confirmation.

3.2.6 Document the File

File documentation is extremely important in the contracting process. The best practice regarding documentation is “do it now.” Don’t rely on your memory to document the file later. Items or events to document in the file include:

- A notation of verbal inquiries received (e.g., names, dates, nature of inquiries).
- Written inquiries.
- Your response and the basis for it (e.g., names, dates).
- Memos regarding factfinding (e.g., whom you consulted, rationales, who made the final decision).
- Copies of any correspondence, including to/from and dates.

CHAPTER 4

AMENDING AND CANCELLING IFBs

THE CASE OF THE PRE-BID CONFERENCE

A contract specialist receives numerous calls from prospective bidders concerning the specifications of a particular IFB. The large number of questions generated by the IFB leads the contract specialist to believe that there is some defect or deficiency in the IFB. The CO determines that a pre-bid conference would clarify the matter and benefit both the government and prospective contractors. At the conference, the CO and the prospective bidders agree as to how to interpret the specifications. In a few weeks, bids are received and a contract is awarded. A protest is submitted by one of the bidders who was not at the pre-bid conference and was unaware of the clarifications made at the conference until the protester examined the bids at the bid opening.

Do you think that the protest will be upheld?

What, if anything, did the contract specialist not do that should have been done?

This chapter will answer these questions and explain in detail the process involved in amending and cancelling solicitations.

LEARNING OBJECTIVES

At the completion of this course, you will be able to:

Overall: Determine whether to amend, cancel or make no changes to the IFB; prepare amendments or cancel the IFB.

Individual:

1. Determine whether or not to amend a solicitation
 - State what to do after obtaining written revisions to the purchase request from the requiring activity.
 - Identify problems with issued solicitations from bidder inquiries or pre-bid conferences.
 - Determine whether to leave the solicitation “as is,” or amend.
2. Prepare an amendment to the solicitation
 - Determine whether to extend the bid opening date.
 - Prepare amendment using the Standard Form 30.
 - State how to issue an amendment.
3. Determine whether or not to cancel the solicitation
 - Determine whether or not to cancel the IFB before bid opening.
 - Identify compelling reasons to cancel IFB after bid opening.
4. Cancel the solicitation
 - Prepare notice of cancellation
 - State what to do to notify prospective bidders of a cancelled solicitation.
 - Document the cancellation in the contract file.

Exhibit 4-1. Learning Objectives.

CHAPTER INTRODUCTION FOR PART I OF CHAPTER 4**Amending IFBs**

To amend an IFB you use an SF 30. This form describes how the IFB is changed (i.e., addition or deletion of quantities, correct or incorrect statements, etc.). The amendment becomes a part of the IFB and of the resulting contract. Amendments can only be used before bid opening. If the amendment, or subsequent amendments are of such a magnitude or complexity as to be confusing or imprecise, you may want to cancel the IFB and start over, including re-publicizing.

Amendments are not necessary just because a prospective contractor has a question or suggests that an amendment should be issued. You must evaluate the situation, consult with others and then make your recommendation to the CO. Amendments are expensive and time consuming and should not be issued unless necessary. However, if an amendment is appropriate, by all means issue it.

**Steps in Amending or
Cancelling IFBs Before
Bid Opening**

The steps in amending IFBs are charted on the next page. Following the flowchart, each step is discussed in turn.

Note: The second topic of this chapter (Cancelling IFBs Before and After Bid Opening) will have two similar step-by-step process flowcharts and a separate introduction.

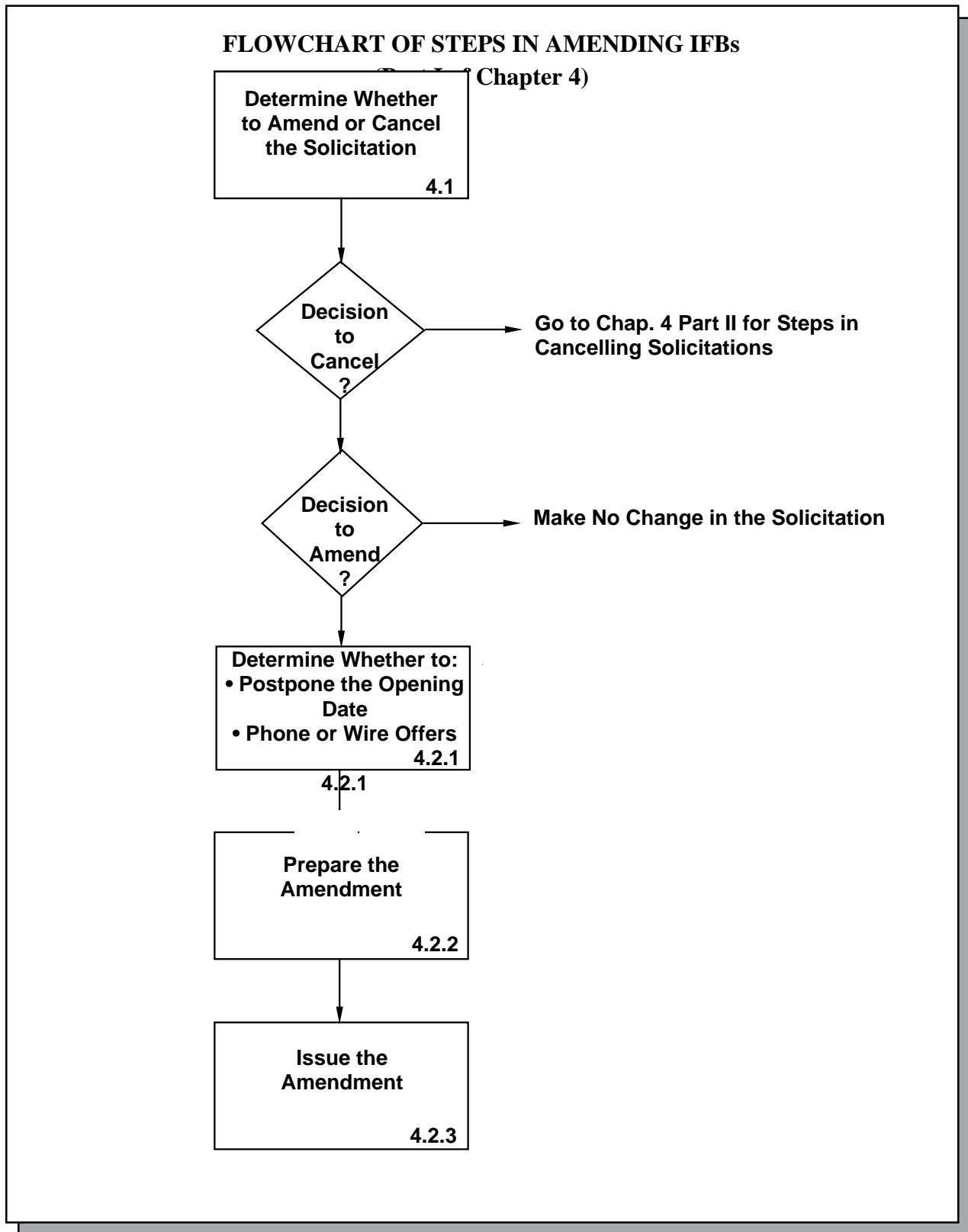


Exhibit 4-2. Flowchart for Part I of Chapter 4.

STEPS IN AMENDING IFBs

4.1 DETERMINE WHETHER TO AMEND OR CANCEL THE IFB

What factors do you consider in deciding whether to amend the IFB before bid opening?

After the IFB is issued, you might receive numerous pre-bid opening inquiries concerning the IFB. If the inquiries persist, you might have to determine whether or not to amend the IFB, cancel the IFB and return the requirement to the requiring activity, or cancel the IFB and resolicit using a new IFB. Problems with the IFB might also become apparent as the result of further “in-house” review, such as changed requirements within the requiring activity or new acquisition regulations within the contracting office. Generally, problems with the IFB are traceable to, or stem from, the specifications or statement of work in Section C and price-related factors in Section M of the IFB.

You might find it necessary to make changes in specifications, delivery schedules, bid opening dates, quantities, or to correct ambiguities or defects in the IFB. Amendments might be necessary as the result of a revised purchase request issued by the requiring activity (e.g., a rewritten specification). Administrative changes to an IFB (e.g., a new bid opening date) deemed necessary by the CO might also result in an amendment.

Problems with IFBs may come to light in a variety of ways:

WAYS TO IDENTIFY PROBLEMS WITH ISSUED IFBs

Identify problems in IFBs from:

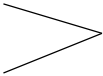
- Bidder Inquiries
 - Pre-bid Conferences
 - Technical Evaluations
 - Factfinding Conferences
- Applicable to Two-Step Sealed Bidding (See Appendix B)
- 

Exhibit 4-3. Ways to Identify Problems with Issued IFBs.

AMENDING AND CANCELLING IFBs

4.1.1 Potential Problems with Issued IFBs

When faced with a large number of inquiries after release of the IFB but before the bid opening, you should reexamine it to determine what the problem is and then decide how to resolve it. Exhibit 4-4 gives examples of what to look for when making a decision on whether to amend or cancel an IFB.

AMENDING OR CANCELLING IFBs

Potential problems with issued solicitations:

- Incomplete, inaccurate, or missing terms, conditions, or data.
- Terms or conditions that are being misinterpreted by potential bidders (vague or ambiguous).
- Release of additional data that was not sent to all potential bidders.
- One or more bidders identified terms or conditions (especially elements of the specification) which are inferior to possible alternatives.
- Terms and conditions that unnecessarily restrict competition or otherwise discriminate against some potential bidders.
- The notice of contract action was not published at least 15 days before issuance of the IFB (in which case an amendment may be necessary to postpone the bid opening date or justify urgency for keeping the bid opening date as is).

Exhibit 4-4. Potential Problems with Issued IFBs.

4.1.2 Pre-bid Conferences

A pre-bid conference is a meeting held before bid opening for the purpose of briefing prospective bidders and explaining complicated specifications and requirements to them. Generally, when using the sealed bidding method of contracting, it is not necessary to hold a pre-bid conference. (The Negotiation Procedures course will cover preparing for a conference where they are more common.) The IFB explains in detail what is needed and few questions are usually raised by prospective bidders. However, if the specifications are complex, or the work is to be performed at a Government site and unusual working

conditions prevail, or in any situation that indicates that a conference will enhance understanding of the requirement, you should plan for a pre-bid conference. The date, time, and place of the conference will be stated in the IFB.

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| FAR 15.409 |
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If the need for a pre-bid conference does not become apparent until after the IFB has been issued, and you decide to hold such a conference, you must notify all sources to whom you sent the IFB of the conference.

If a pre-bid conference is held, prospective bidders may ask questions concerning the IFB, and the CO may give them guidance at that time or in subsequent written communications.

When the questions have been resolved, either during or after the conference, you must notify all sources to which you released the IFB, telling them the questions that arose during the conference and what was resolved.

Note: A pre-bid conference should never be used as a substitute for amending a defective or ambiguous IFB. If a decision is made to amend the IFB, the amendment shall be accomplished by using the Standard Form (SF) 30—Amendment of Solicitation/ Modification of Contract. The fact that a change was agreed to at a pre-bid conference does not relieve you of the necessity of issuing the amendment and sending it to all prospective bidders to which you sent the IFB.

Let's look back at the questions on the first page of this chapter. Can you answer them now based on the information you have just read?

The protest will be upheld because all of the prospective bidders were not furnished the information discussed at the pre-bid conference. Pre-bid conferences shall never be used as a substitute for amending a defective or ambiguous invitation.

In addition to pre-bid conferences, site visits (which normally precede the conference) may be useful as a means of providing prospective bidders the opportunity to examine Government facilities or equipment that will be part of or affected by the work under the contract.

AMENDING AND CANCELLING IFBs

4.1.3 Problems Discovered “In-House” or Changed Requirements

Problems with the IFB are often detected by bidders, either through inquiries (as discussed in Chapter 3) or through pre-bid conferences. However, the requiring activity or other Government officials may discover problems with the IFB or ask that the IFB be amended because:

- The number of units to be purchased should be increased or decreased.
- A decision has been made to change the specifications or statement of work.
- The place or time for delivery has changed.
- A price-related evaluation factor is to be included.
- It has been decided that either a bid sample or descriptive literature should be required.
- The date, time, or place of bid opening should be changed or corrected.

Whatever the circumstance, you must amend the solicitation in order to change it. Any such change must be accomplished by issuing an SF 30.

4.2 AMEND THE IFB

4.2.1 Postpone the Bid Opening Date

If you decide to amend a solicitation, you must next decide whether to extend the bid opening date. Sound business judgement must be used so that the bid extension does not limit competition. Many protests occur when prospective bidders perceive bid extensions (or the refusal to extend a bid opening date) as favoring certain competitors. Consider the time required to amend the IFB and distribute it, and the time required for the prospective bidders to make any necessary changes to their bids. If the time available before opening is insufficient, extend the bid opening date. If the conditions warrant, you may notify prospective bidders by telegram or telephone of the planned change and of the extension. (Time extensions for bids are covered in detail in Chapter 5 of this text.) In addition, you must confirm the changes in a written amendment to the IFB. The amendment must be sent to all the prospective bidders to whom you sent the IFB.

4.2.2 Prepare Amendment (SF 30)

The SF 30 is prescribed for use when amending a solicitation (and modifying contracts). Instructions for filling out the SF 30 are provided on the back of the form. Items that must be included are shown in Exhibit 4-5.

PREPARING THE SF 30

Be sure to:

- Include the number of the solicitation that you are amending, as well as amendment number.
- Indicate whether or not the date and time set for bid opening is extended.
- Show the new date and time set for bid opening.
- Clearly show what the amendment does to the IFB — changes, additions, corrections, etc.
- Put all changes under the appropriate UCF heading.
- Attach any new specifications, drawings, etc., and clearly mark them as replacements to existing pages or additions thereto.

Exhibit 4-5. Preparing the SF 30.

4.2.3 Issue Amendment

FAR 5.101(a)(2)

You should issue the amendment to all prospective bidders to whom you sent the IFB and you must display a copy of the amendment at any public place that the IFB was displayed.

AMENDING AND CANCELLING IFBs

An example of a completed SF 30 and the instructions on the back of the form are shown on this page and the next.

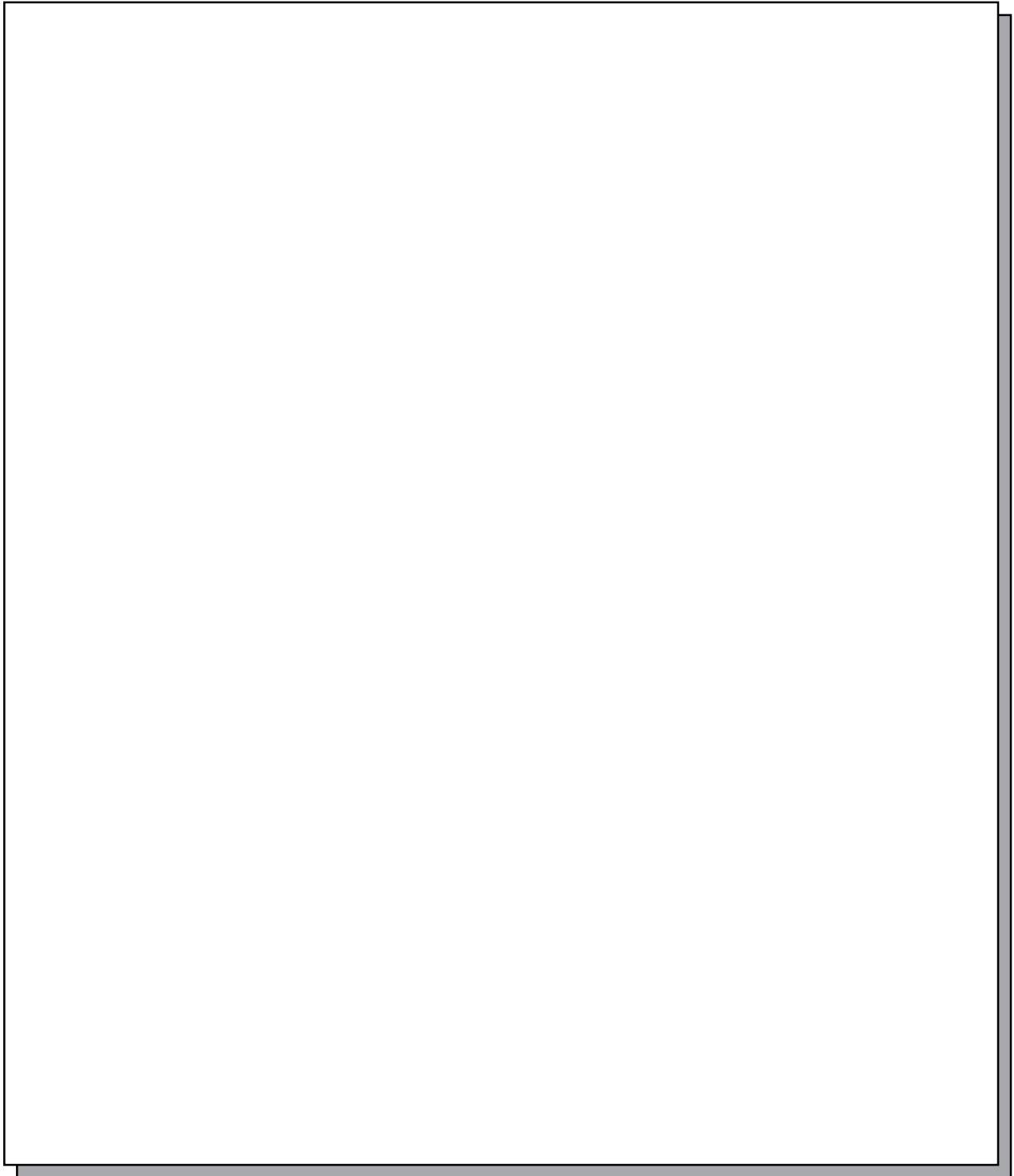


Exhibit 4-6. The Standard Form 30.

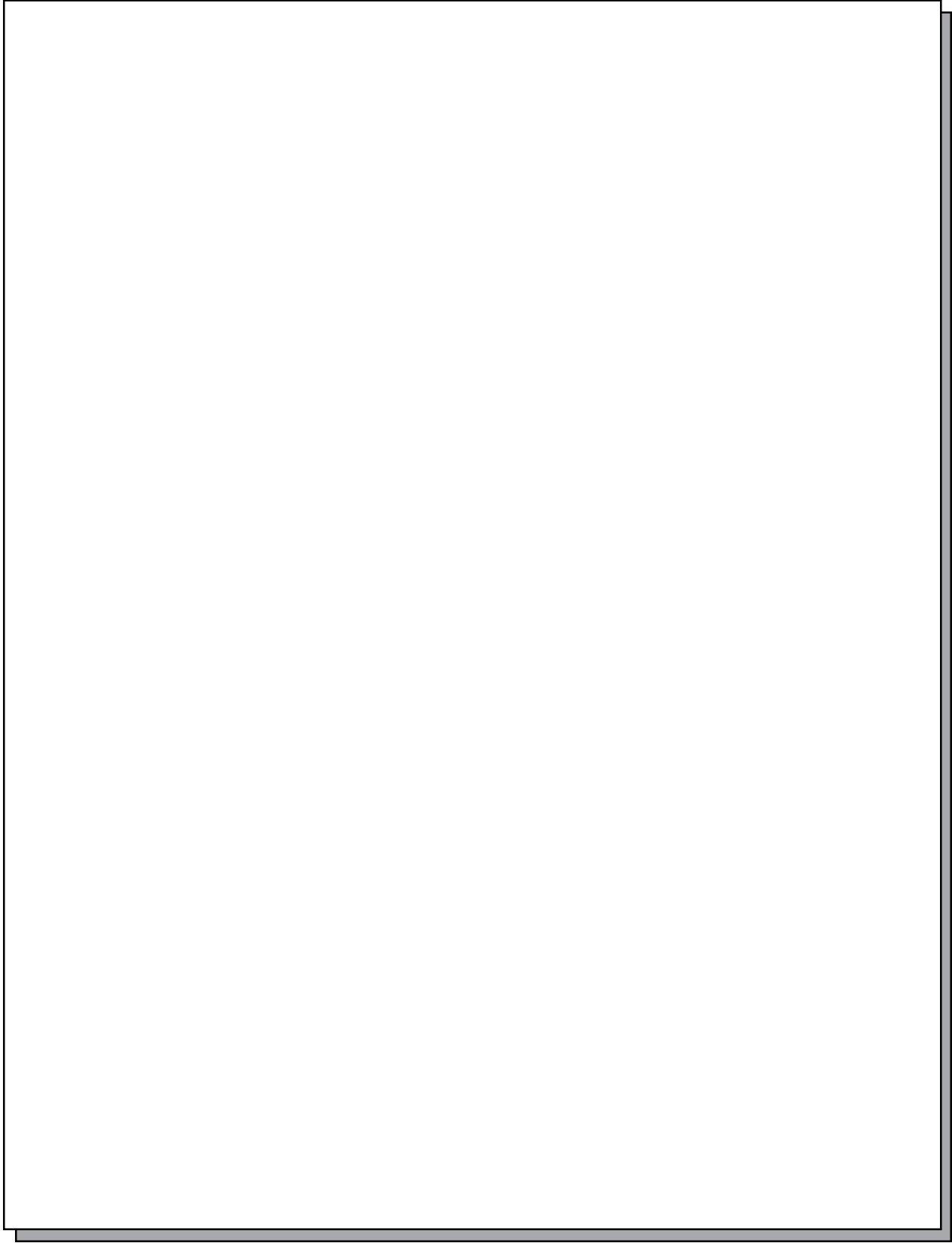


Exhibit 4-6a. The Standard Form 30 Back.

AMENDING AND CANCELLING IFBs

NOTES

CHAPTER INTRODUCTION FOR PART II OF CHAPTER 4

Cancelling the IFB Before Bid Opening

If after the issuance of the IFB and any amendments you find that the action should be terminated and no award made, cancel the IFB before bid opening.

Cancelling IFBs After Bid Opening

Normally, once bids are opened an award must be made to the low, responsive, responsible bidder. However, there are instances that may occur warranting a decision to cancel the IFB after bid opening.

Steps in Cancelling IFBs Before and After Bid Opening

The steps in cancelling IFBs before and after bid opening are charted on the next two pages. Following the flowcharts, all steps are discussed in turn.

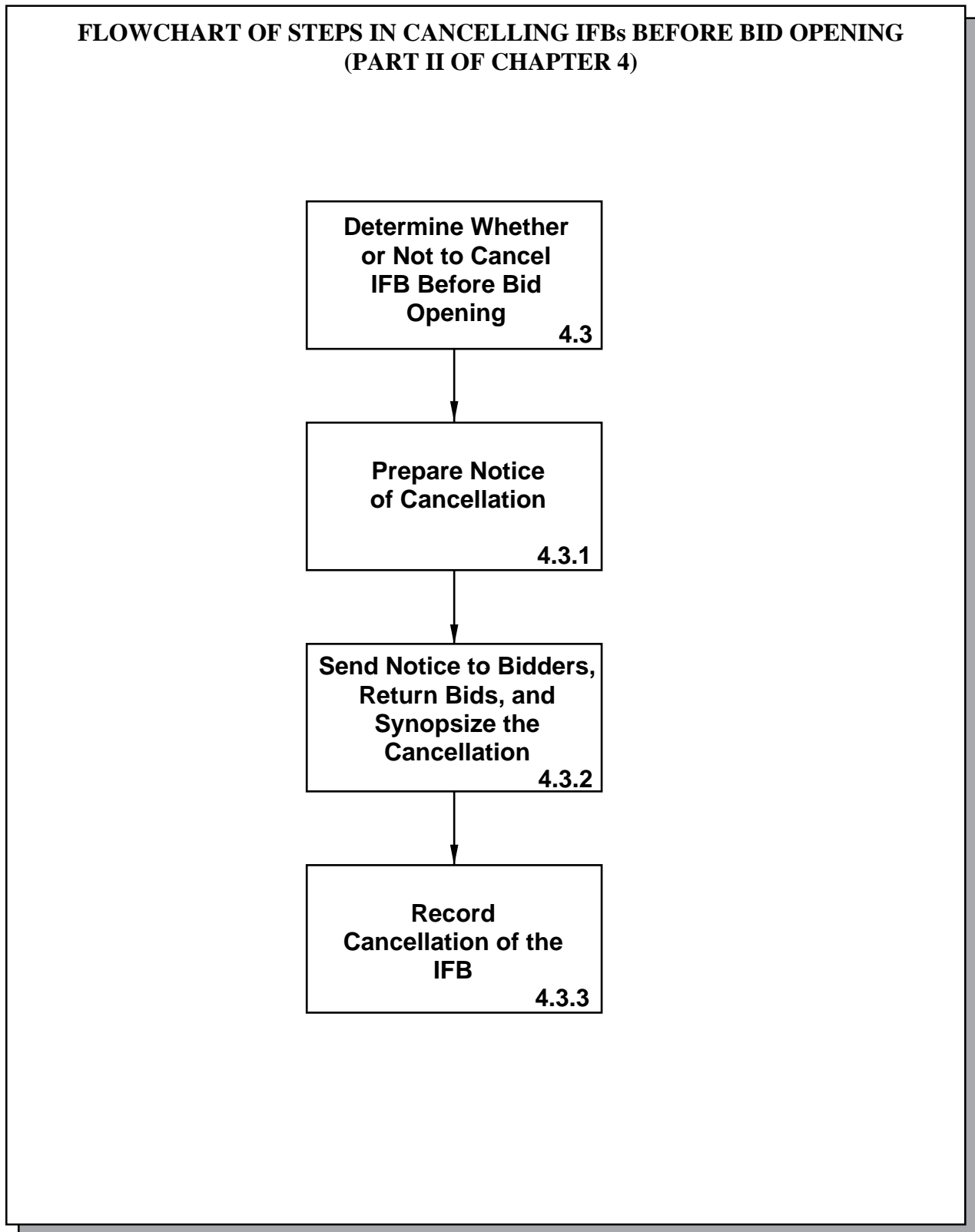


Exhibit 4-7. Flowchart of Steps in Cancelling IFBs Before Bid Opening.

**FLOWCHART OF STEPS IN CANCELLING IFBs AFTER BID OPENING
(PART II OF CHAPTER 4)**

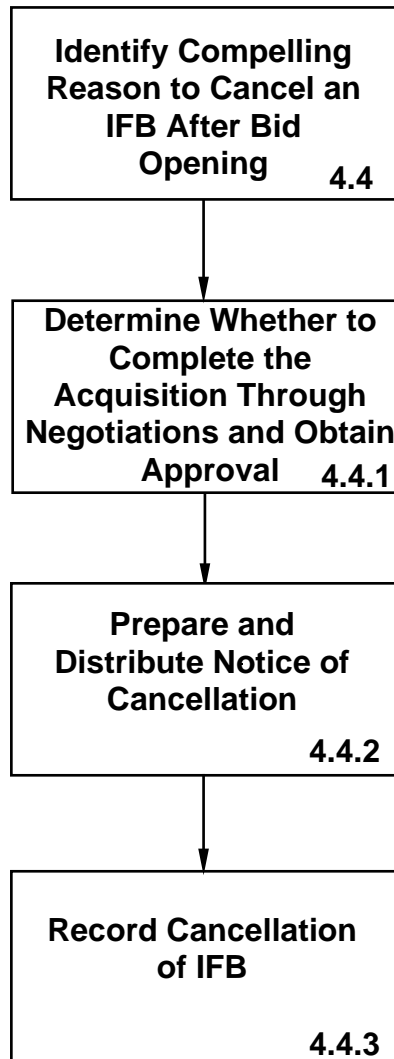


Exhibit 4-8. Flowchart of Steps in Cancelling IFBs After Bid Opening.

STEPS IN CANCELLING IFBs BEFORE AND AFTER BID OPENING

4.3 DETERMINE WHETHER OR NOT TO CANCEL IFB BEFORE BID OPENING

The cancellation of an IFB involves time, money, and effort, both the Government's and the prospective bidders'. Therefore, if a cancellation becomes necessary, take prompt action. Avoid cancellations unless they are clearly necessary or in the public interest.

Situations that call for a cancellation include:

- There is no longer a requirement for the supplies or services.
- Amendments to the IFB would be so extensive (i.e., the overall scope of the work has changed to such an extent that the original synopsis and/or IFB no longer validly describe the requirements) that a new IFB is desirable.
- The necessary funds are no longer available.

4.3.1 Prepare Notice of Cancellation

Cancellation notices are generally prepared in letter form or by completing an SF 30 and include the information provided in Exhibit 4-9.

INCLUDE IN THE CANCELLATION NOTICE

- The solicitation number.
- A brief description of the supplies or services cancelled.
- Reasons for cancelling the IFB.
- A statement that the addressee will be given the opportunity to bid on any future requirements for the work or services cancelled.

Exhibit 4-9. Include in the Cancellation Notice.

4.3.2 Send Notice to Bidders, Return Bids, and Synopsize the Cancellation

When you cancel a solicitation, you must return, unopened, any bids received and prepare a notice of cancellation. Send the cancellation notice to all prospective bidders to whom the IFB was sent. If you receive any more bids (those in the mail before the cancellation) be sure to return them unopened to the sender.

Publishing a cancellation synopsis in the CBD is good procurement practice and may be required by agency policy. However, the FAR does not require that a cancellation synopsis be written. If the cancelled solicitation is going to be resolicited, synopsize the cancellation in conjunction with the synopsis for the resolicitation.

4.3.3 Record Cancellation of IFB (Document the File)

After the cancellation notice has been released, you should document the contract file as follows:

- Reasons for the cancellation.
- A copy of the cancellation notice.
- Related letters, memos, etc.
- Number of IFBs distributed.
- Number of bids received.

4.4 IDENTIFY COMPELLING REASON TO CANCEL IFB AFTER BID OPENING

Circumstances do exist that may support a decision to cancel an IFB after the opening of bids when:

FAR 14.404-1

“Preservation of the integrity of the competitive bid system dictates that, after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation.”

You must follow that policy precisely. Not only is it a clear regulatory policy, the concept has been upheld and enforced consistently by decisions of the Comptroller General. Because of the concern for the sealed bidding system expressed in that statement, it is followed by another statement that emphasizes the avoidance of situations calling for cancellation of an IFB:

“Every effort shall be made to anticipate changes in a requirement before the date of opening and to notify all prospective bidders of any resulting modification or cancellation. This will permit bidders to change their bids and prevent unnecessary exposure of bid prices.”

The last sentence goes to the heart of the matter: once bids have been opened and competitive positions revealed, any further competitive action will almost certainly fail to achieve all the benefits of the sealed bidding method of contracting.

Exhibit 4-10 shows several examples of when cancelling after bid opening may be appropriate. Each example is then discussed in detail.

CANCELLING IFBs AFTER BID OPENING**FAR 14.404-1****MUST CANCEL**

- Non-availability or non-identification of specifications.

MAY CANCEL WITH AGENCY HEAD'S WRITTEN DETERMINATION

1. Instances where the CO shall cancel and may resolicit:

- Inadequate or ambiguous specifications were cited in the IFB.
- Specifications revised.
- All factors of cost to the Government not included in the IFB.
- Bids indicate that needs can be met by less expensive articles.
- Other reasons clearly in the public interest.
- If negotiation is not allowed by the agency head, then see the circumstances outlined in Section 4.4.1.

2. Other instances where the CO may cancel:

- A-76 cost comparison shows performance more economical in-house.
- Supplies or services no longer required.

SHOULD NOT CANCEL; AWARD AS SOLICITED

- Due solely to increased requirements for the items being acquired.
- Prospective bidder is inadvertently not solicited.

Exhibit 4-10. Reasons for Cancelling IFBs After Bid Opening.

AMENDING AND CANCELLING IFBs

Must Cancel

FAR 10.008

IFBs must specifically cite specifications and standards that apply to the work to be performed. Those documents are generally included as part of the IFB package. If, after bid opening, it is discovered that the specifications were not available or that they were not clearly or completely identified you must cancel the IFB. Without a clear description of the work, all bidders may not be bidding on the same footing and a low bid is meaningless.

May Cancel With Agency Head's Determination

Cancelling after bid opening can be made only by a written determination of the agency head. You may not merely let the bids expire instead of formally cancelling the solicitation. If the agency head makes such a determination, the CO will take action as indicated in the following two categories:

Category 1: In these situations, the CO shall cancel the IFB and may resolicit if the need still exists.

- **Inadequate or ambiguous specifications were cited in the IFB.** If you resolicit, ensure that this deficiency is completely over-come.
- **Specifications were revised.** If you resolicit, ensure that the revised specifications are clearly identified and that the “old” specifications do not reenter the system. Emphasize to the requirements personnel that they must provide you with firm specifications; point out the problems caused by a cancellation.
- **The invitation did not provide for consideration of all factors of cost to the Government,** such as cost of transporting Government-furnished property to bidders’ plants. Three fundamental problems are inherent in this situation. First, award cannot be made on any basis other than the low bid and the price-related factors stated in the IFB. If price-related factors are not stated, you must award to the low bidder (unless the IFB is cancelled). Second, awarding to the low bidder without considering price-related factors (that should have been stated) may not result in the most favorable transaction for the Government (see Chapters 2 and 5). Third, depending on what the price-related factor is, a prospective bidder might or might not bid, depending on the effect that factor has on its competitive position. If it is appropriate to use a price-related factor(s), be sure it is included in the resolicitation.

- **Bids received indicate that the needs of the Government can be satisfied by a less expensive article for which the bids were invited.** Sometimes bidder will ask for a waiver of certain requirements, or offer alternative items that they claim will result in meeting the Government's needs at a lesser price. If there is enough indication that the Government's needs can be met less expensively by specifying a different article, you should resolicit and specify the different article. Concurrence of the requirements organization must first be obtained.
- **Cancellation was made for reason clearly in the public interest.** Situations include an undesirable environmental impact if award is made under the current IFB, or perhaps changes in international relations and cancellation and resolicitation is desirable.
- **Negotiation is not allowed by the agency head.** If the written determination by the agency head does not authorize completion of the acquisition by negotiation, you may resolicit.

Category 2: In the following situations, the CO shall cancel and not resolicit.

- **A cost comparison as prescribed in OMB Circular A-76 and FAR Subpart 7.3 shows that performance by the Government is more economical.** If the Government in effect "wins the bidding," the IFB will be cancelled. The work will be performed by the Government.
- **The supplies or services being contracted for are no longer required.** Cancel. Do not resolicit.

Category 3: In the following situations, the CO should not cancel the solicitation.

- Due solely to increased requirements for the items being acquired.

AMENDING AND CANCELLING IFBs

- Prospective bidder is inadvertently not solicited due to an oversight, the general rule is that such failure is not sufficient reason to require rejection of all bids or cancellation of an award and subsequent readvertisement.

4.4.1 Determine Whether to Complete the Acquisition Through Negotiations and Obtain Approval

There are circumstances which could be handled more efficiently through negotiation with the original bidders instead of resoliciting. The agency head must authorize completion of the acquisition by negotiation in writing. Generally, negotiation will be permitted when the circumstances relate to responsiveness and reasonableness. Exhibit 4-11 shows several examples of when the CO may decide to complete the acquisition through negotiations. Each example is then discussed in detail.

| NEGOTIATING IFBs AFTER BID OPENING FAR 14.404-1 |
|--|
| <p>Instances where the CO shall cancel and may complete the acquisition by negotiation if authorized in written determination.</p> <ul style="list-style-type: none">• No responsive bids received from a responsible bidder.• Only one bid received and reasonableness of price cannot be determined.• All bids received are at unreasonable prices.• Bids not independently arrived at. |

Exhibit 4-11. Reasons for Cancelling IFBs After Bid Opening.

The CO shall cancel the IFB and may complete the acquisition by negotiation if so authorized in the determination:

- **No responsive bid was received from a responsible bidder.** The rule is that a bid not responsive at the time of bid opening cannot later be made responsive. Therefore, if none of the bids were responsive, award cannot be made.
- **Only one bid was received and the CO cannot determine the reasonableness of the bid price.** It is permissible, even if only one responsive bid is received, to make an award if there is a basis for determining reasonableness of price. If there is only one bid received, and there is no method for determining price reasonableness, award cannot be made.
- **All otherwise acceptable bids received are at unreasonable prices.** Even though more than one responsible responsive bid was received, the CO will not award unless the low price offered is fair and reasonable. Price reasonableness is often a judgement call to be made by the CO with input as necessary from the requirements organization.
- **The bids were not independently arrived at in open competition: were collusive, or submitted in bad faith.** Any of these situations may be quite difficult to detect. Once identified, you must notify the Department of Justice and not award the contract.

AMENDING AND CANCELLING IFBs

4.4.2 Prepare and Distribute the Notice of Cancellation

A notice of cancellation after opening bids is prepared the same way as for cancellations that occur before bid opening. A synopsis of the cancellation notice is not mandatory but may also be published.

4.4.3 Record Cancellation of IFB (Document the File)

Documenting the file when cancelling after bid opening is the same for cancelling before bid opening except:

- Include the bids in the file.
- Include the Abstract of Offers, SF 1409 (see Chapter 5), in the file.
- Include the agency head's determination to cancel the IFB.
- Document any follow-on action taken as a result of the cancellation of the IFB.

CHAPTER 5

PROCESSING BIDS

THE CASE OF THE LATE BID

Four bids for office furniture were publicly opened on a Tuesday at 1:00 PM and copies of the bids were posted.

On the following day, the bid of WeSell Office Furniture Company was received via Federal Express. Because it was late, it was recorded, stamped late, and the bidder was sent a notice concerning the late bid. The receipt indicated that it had been mailed on Thursday afternoon (3:00 PM) of the previous week — 2 workdays prior to the bid opening.

The contractor protested that, since the bid was sent by Federal Express 2 days prior to opening (and there was a receipt to prove it), it should have been considered. But the CO refused.

Is the CO correct in his/her decision?

This example of a late bid illustrates the complexity of bid processing. This question will be answered later in this chapter.

LEARNING OBJECTIVES

At the completion of this course, you will be able to:

Overall: Process incoming bids, request time extensions, determine which late offers can be considered, determine whether the lowest price is reasonable and determine responsiveness to the IFB.

Individual:

1. Receive and control bids
 - Secure bids, or modification to bids, in a locked box or safe.
 - Return bids unopened, if IFB is cancelled.
 - Provide information concerning bidder identity to Government employees only on a “need to know” basis.
2. Open, read, and abstract bids
 - Ensure that all bidders’ representatives have an appropriate security clearance if the bid is classified.
 - Open the bid on the designated date and time.
3. Request time extensions of bid expiration dates
 - Determine each bid’s acceptance period.
 - Identify any bid that fails to offer the minimum bid acceptance period and reject each such bid as nonresponsive.
 - Explain what to do if award will be delayed and the time set forth in the bid will expire.
4. Determine which late bids can be considered for award
 - Identify all bids which are received in the designated Government office after the exact time specified in the solicitation.

LEARNING OBJECTIVES (Con't)

- Determine which late bids can be opened and considered for award.
 - State what to do when an unacceptable late bid is received.
5. Determine responsiveness to the IFB
- Determine whether the bid conforms to the essential requirements of the IFB.
 - Identify minor informalities and irregularities in the bid.
 - Provide the bidder with an opportunity to cure any deficiency resulting from the irregularity.
 - Reject nonresponsive bids.
6. Calculate the evaluated price for each bid
- Identify price-related factors in the bids.
 - Describe the procedure for verifying the bidder's computations and applying price-related factors to determine the evaluated price.
7. Determine whether the lowest price is reasonable
- Describe price analysis and the procedures used to determine whether the bid in line for award is fair and reasonable.
 - Convert from sealed bidding to negotiation if all otherwise acceptable bids received are at unreasonable prices.
 - Determine the bid that is in line for award for equally low bids.

Exhibit 5-1. Learning Objectives.

PROCESSING BIDS

NOTES

CHAPTER INTRODUCTION

Processing Bids

In this chapter, you will learn how the process of sealed bidding actually operates. Bids are received, then opened at a public bid opening and any late bids processed accordingly. You first have to determine if each bid is responsive, then you evaluate bids and determine the lowest price.

Purpose and Standards of Processing Bids

The purpose of processing bids is to ensure that:

- Bids are received and kept secure until bid opening.
- Bids are opened at a public bid opening at the time and date designated.
- Time extensions are granted on bid expiration dates where appropriate.
- Late bids are considered if they meet requirements of FAR.
- Bids that are nonresponsive are not considered for award.
- Bids are evaluated properly.
- Awards are made only to responsive bids from responsible bidders.

Steps in Processing Bids

The steps in processing bids are charted on the next page. Following the flowchart, each step is discussed in turn.

PROCESSING BIDS

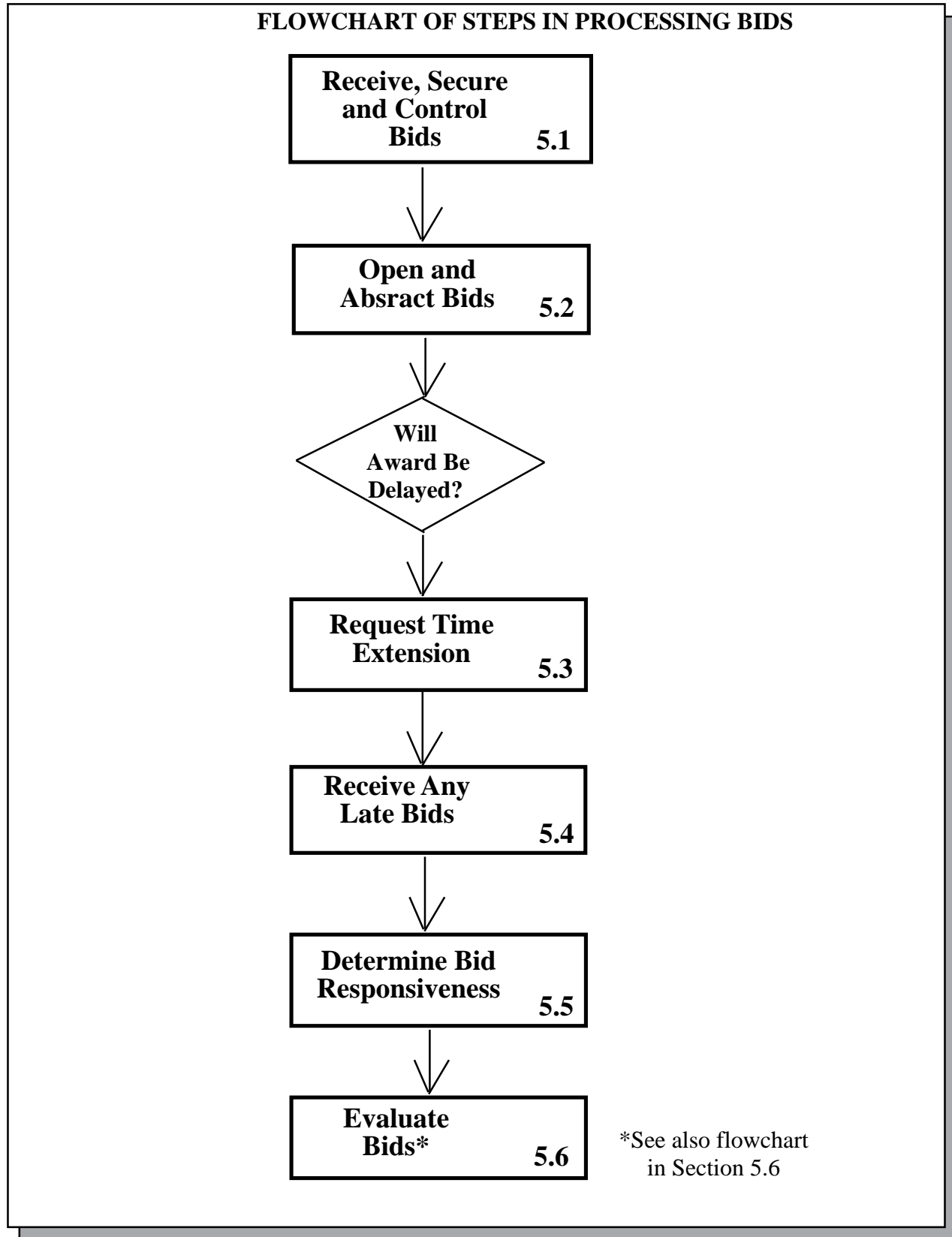


Exhibit 5-2. Flowchart of Steps in Processing Bids.

5.1 RECEIVE, SECURE, AND CONTROL BIDS

Sealed bidding is a method of contracting that employs competitive bids and public opening of bids and awards. It is designed to afford all prospective bidders an equal opportunity to do business with the Government, and secure the best possible bargain for the public. To achieve these results, all bidders must be afforded an opportunity to bid on a common basis. In other words, they must have an opportunity to:

- Bid in the same manner.
- Bid at the same time.
- Bid on the same terms and conditions.
- Have bids evaluated on the same predetermined basis.

Bidders may submit their bids in a variety of methods: regular mail, certified/registered mail, messenger, USPS express mail, commercial express mail, facsimile, etc. Solicitations require bids be received by the **exact** time and date set for receipt of bids. Any method used by the bidder other than certified, registered mail sent 5 days prior to bid opening or USPS express mail sent 2 days prior is done at their own risk. How bids are received, secured and controlled is important to the bid evaluation process. The bid envelope should indicate which solicitation the bid is answering. Optional Form 17 is usually provided in the IFB for this purpose.

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| FAR 14.202-3(b) |
|-----------------|

5.1.1 Secure Bids

As bids arrive at the place designated in the IFB, a receiving official will time stamp them, record the receipt in the bid log, and secure them in a locked bid box or safe. All bids received shall be held unopened in the locked box until the time set for bid opening. Before bid opening, information concerning the identity and number of bids received shall be made available to Government employees only on a “need to know” basis.

PROCESSING BIDS

SECURING BIDS

Steps to secure bids:

1. Time stamp bids
2. Record receipt in bid log
3. Secure in locked bid box or safe with bid log
4. DO NOT OPEN BIDS
5. Provide information to Government employees only on a “need to know” basis

Exhibit 5-3. Securing Bids.

Envelopes that are not marked **or** marked as bids but do not identify the bidder or the solicitation may be opened solely for identification. In these cases, the envelope shall include the opener’s signature and position title and shall be delivered to the designated contracting official. This official shall immediately write on the envelope:

- An explanation of the opening,
- The date and time opened, and
- The solicitation number.

The official should then immediately sign and reseal the envelope. No information contained in the envelope shall be discussed before the time set for bid opening.

5.1.2 Facsimile and Telegraphic Bids

5.1.2.1 Facsimile Bid

FAR 14.202-7

Contracting officers may authorize facsimile bids provided the solicitation contains the facsimile bid provision at FAR 52.214-31. Factors to consider before making the authorization include:

- Anticipated bid size and volume
- Urgency of requirement

- Frequency of price changes
- Availability of receiving facsimile equipment
- Adequacy of controls for receiving, etc. facsimile bids, and ensuring their timely delivery to the bids opening location.

5.1.2.2 Telegraphic Bid

In the typical IFB, telegraphic (also mailgram) bids will not be considered. However, you can authorize the use of telegraphic bids if:

FAR 14.202-2

The IFB contains the telegraphic bid provision (FAR 52.214-13), **and**

- The date for the opening will not allow bidders sufficient time to submit bids on the prescribed forms; **or**
- Prices are subject to frequent changes

FAR 14.302(c)

The designated office for receipt of bids can consider a bid communicated telephonically by the telegraph office. Award, however, may not be made until the telegram is received by the designated office. If the telegram is not received by the designated office within 5 days after the bid opening date, the bid shall be rejected.

5.1.3 Modifications or Withdrawals of Bids

Bids may be modified or withdrawn by written or telegraphic notice if the notification is received in the office designated in the IFB no later than the exact time set for bid opening.

FAR 14.303

Unless prescribed by agency regulations, a telegraphic modification or withdrawal of a bid received in such office by telephone from the receiving telegraph office shall be considered. However, the message must be confirmed by the telegraph company by sending a copy of the written telegraph that formed the basis for the telephone call. Modifications received by telegram (including a record of those telephoned by the telegraph company) shall be sealed in an envelope by a proper official. The official shall write the following on the envelope and then sign it:

- The date and time of receipt
- Who received it
- The number of the IFB

PROCESSING BIDS

No information contained in the envelope shall be discussed before the time set for bid opening.

5.2 OPEN AND ABSTRACT BIDS

5.2.1 Postpone Bid Opening After the Date and Time Set

A characteristic of sealed bidding is the public bid opening and unless the acquisition is classified, the public at large can attend. The exact time of bid opening is stated in the solicitation. The date set for bid opening can be changed by amendment to the solicitation any time prior to that time. After the exact date and time postponing the actual opening of the bids is authorized when:

- You believe that bids of a large number of bidders have been delayed in the mails for causes beyond their control (e.g., flood, fire, accident, weather conditions, or strikes).
- Emergency or unanticipated events interrupt normal governmental processes so that bid openings as scheduled cannot take place.

There are two ways of postponing a bid opening:

1. Make a public announcement informing all prospective bidders and issue formal amendment to the IFB.
2. Proceed with bid opening as soon as practical after the time scheduled without prior amendment or notice of bidders when the delay is caused by Government emergency or unanticipated event.

A note should be made on the abstract of offers or otherwise added to the file explaining the circumstances of the postponement.

5.2.2 Conducting the Bid Opening

If you are the bid opening officer, you announce to all those present that the designated time for bid opening has arrived. Do not accept hand-carried bids after this time. You shall then follow the steps outlined in Exhibit 5-4.

BID OPENING

- Personally and publicly open all bids
- Read the bids aloud to the persons present, if practical
- Have the bids recorded
- Safeguard the original of each bid until:
 - The abstract of bids has been filled out, and
 - Its accuracy has been verified
- Make the bids available for review by interested persons

Exhibit 5-4. Bid Opening.

You may designate an assistant to open and record the bids, but you will remain fully responsible for the actions of the assistant.

What do you read aloud at bid opening? Generally, you read the name of the bidder, the prices bid, discounts, and similar data. As in many areas of buying, you have to use discretion and common sense to determine how much data you should read.

If many bids are received with numerous line items, streamline what you read aloud — otherwise you might spend several hours reading bids aloud.

If a particular bidder inserted a long statement with the bid, you might say “Bidder has also submitted a statement that will be included with the bid. You can all see the statement when you review the bids.”

When and how do you record bids at bid opening? The usual procedure at bid opening is for one person to open the bids and read them aloud, and for another person to write down this information, generally on a Standard Form 1409 - Abstract of Offer. Most bids are fairly simple and the person who opens the bids will read everything on the bid. For example, “Item 1; 10 boxes; unit price \$1,000; total price \$10,000; destination; no discount. Bid from Jones Co., New York City, NY.”

PROCESSING BIDS

There may be five bidders; this will be all taken down and that is the complete record. Any modification received must be annotated on the abstract if the change affects price, delivery quality, or quantity.

Later, a formal abstract of bids is prepared. If it is a complicated bid, and there are many bidders, additional information may be placed on the abstract, because it is not practical to read all the data publicly at bid opening.

Interested parties may examine duplicate bids if this does not interfere with Government business. Original bids should not be allowed to pass out of the hands of a Government official unless duplicate bids are not available. In this case, an original bid may be examined by the public, but only under the immediate supervision of a Government official. The Government must ensure that there is no possibility of a substitution, addition, deletion, or alteration in the bid.

5.2.3 Abstracting Bids

As soon as possible after bid opening, you or the recorder must complete a Standard Form 1409—Abstract of Offers. After the form is complete, you must certify its accuracy. If the solicitation is unclassified, you then make the completed abstract available for public review. Generally, abstracts of bids are placed in a loose leaf book that is kept in the bid room and available for anyone to view.

In some IFBs, there may be too many bid items to warrant complete recording of all bids on the SF 1409. In this case, abstract entries for individual bids may be limited to item numbers and bid prices. The extra columns and SF 1410 (Abstract of Offers—Continuation) may be used to label and record any information you feel is necessary.

For example, an IFB may have 20 line items and may ask for prices f.o.b. origin and f.o.b. destination. Some bidders may bid “All or None,” others may submit extensive notes explaining how they intend to solve some of the problems they think they will encounter on the contract. If all this data were placed on the abstract, it might run several pages and could take several hours to write. In addition, if you tried to abbreviate the data, you might omit significant information that could result in a disappointed bidder making a protest due to being misled by the incomplete abstract. It might be better, therefore, to make a simple abstract and refer the reviewer to the bids that were submitted. The original bid is the best evidence of what was bid.

Abstracts should not contain information regarding:

- Failure to meet minimum standards of responsibility,
- Apparent collusion of bidders, and
- Other notations properly exempt from disclosure to the public pursuant to the Freedom of Information Act.

FAR 24.202(b)

A sample copy of a completed SF 1409 is provided as Exhibit 5-5 on the following page. This form shows how the abstract should look when filled out.

5.2.4 Classified Bid Opening

If a bid is classified, the opening shall not be accessible to the general public. Openings may be witnessed and results recorded by those bidder representatives who:

- Have been previously cleared from a security standpoint, and
- Represent bidders who were invited to bid.

No public record shall be made of bids or bid prices received in response to classified solicitations. The CO is responsible for seeing that classified bids are handled appropriately.

PROCESSING BIDS

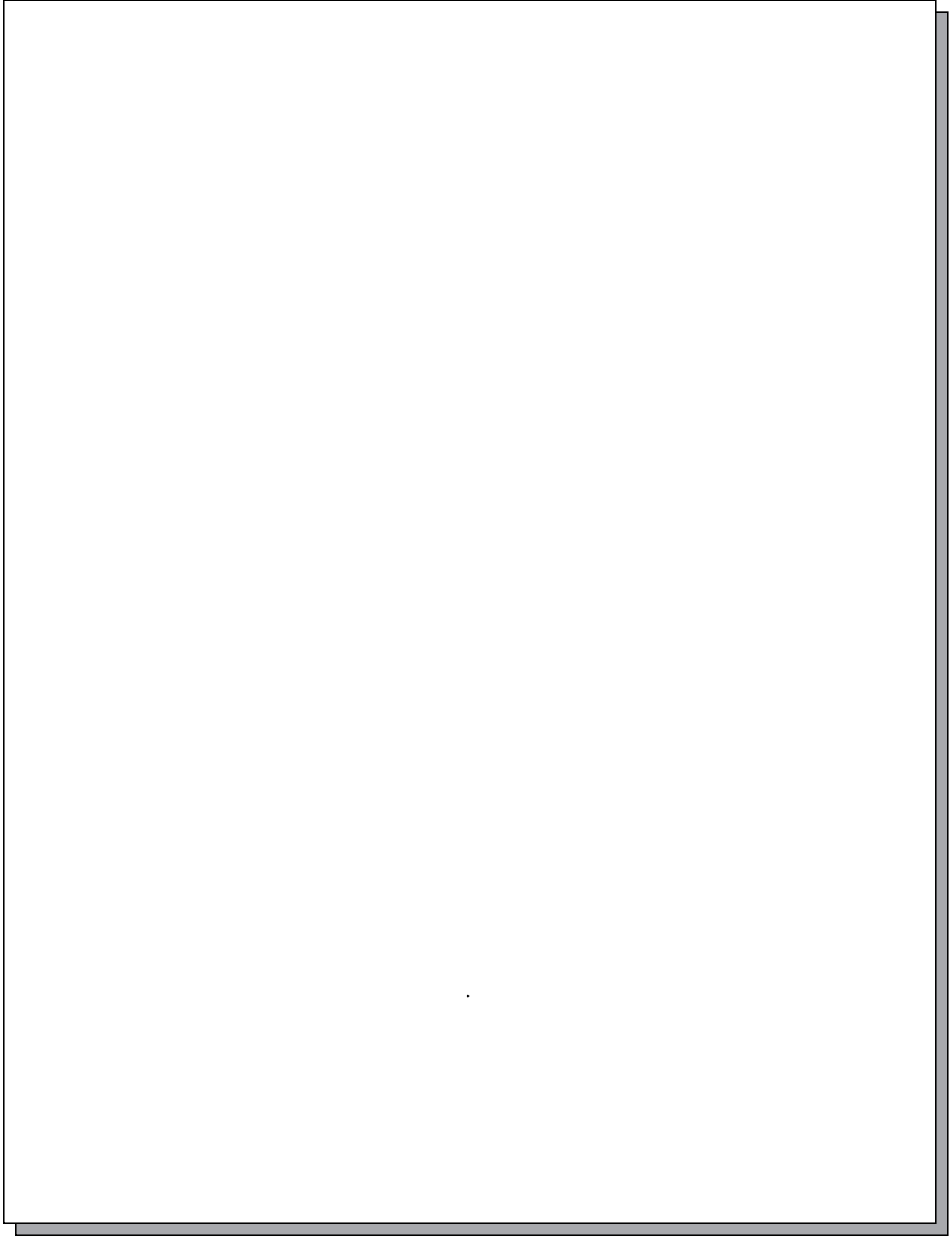


Exhibit 5-5. Sample Abstract of Offers (SF 1409)

5.3 REQUEST TIME EXTENSIONS

FIRM-BID RULE

A bid remains in competition until expiration of the acceptance period or rejection of the bid.

Exhibit 5-6. Firm-Bid Rule.

5.3.1 Firm-Bid Rule

FAR 52.214-15 and 16

Exhibit 5-6 is known as the firm bid rule (*Refining Associates, Inc. vs The U.S. Court of Claims No. 115, 1953*) and it is important because all bidders learn the bid prices of their competitors at the time of bid opening. If the firm-bid rule was not in effect, bidders would be able to withdraw or modify their bids to make them more favorable.

In sealed bidding each bidder is given “**one bite of the apple**” to win the award. The lowest bidder is entitled to the award without fear the Government will **arbitrarily** select a higher bidder. At the same time the low bidder must not be allowed to **arbitrarily** withdraw or modify their bid because they bid too low and now want out of the deal. The Government is entitled to delivery of their requirements at that low price. The rights of both the Government and the bidders must be protected once all the prices have been revealed.

Bidders are given the opportunity to specify the time period in which their bids can be accepted. The SF 33 provides a blank at Item 12 specifically for this purpose as shown below:

PROCESSING BIDS

PERIOD FOR ACCEPTANCE OF BIDS (APR 1984)

“In compliance with the solicitation, the bidder agrees, if this bid is accepted within _____ calendar days (60 calendar days unless a different period is inserted by the bidder) from the date specified in the solicitation for receipt of bids, to furnish any or all items upon which prices are bid at the price set opposite each item, delivered at the designated point(s), within the time specified in the Schedule.”

Exhibit 5-7. Period for Bid Acceptance

The Government is automatically given 60 days to consider the bids, make a selection and notify the awardee. However, the 60 day period can be changed by the bidder or the Government.

If the bidder chooses to offer a longer or shorter time period, that is acceptable. However any bid with a shorter time period can only be considered within that time period. Once that period has passed the bid period cannot be extended.

If the Government believes 60 days is insufficient time to evaluate the bids they can establish a longer acceptance period. This change must be decided prior to issuance of the solicitation and FAR clause 52.214-16 shall be used in lieu of the standard 60 day clause. Once the Government establishes a “minimum period” all bidders must comply. Any bid offering less than the minimum number of days will be rejected as nonresponsive and will not be considered for award.

5.3.2 Obtain Time Extensions

Administrative difficulties, such as an alleged mistake in bid was claimed or a protest was lodged, may be encountered after bid opening that may delay award beyond bidders' acceptance periods. If this is the case, several of the lowest bidders, whose bids have not expired, should be requested to extend in writing the bid acceptance period. This will alleviate the need for resoliciting. After you make a request for the time extension, obtain verification of the time extension from those bidders.

5.4 RESOLVE LATE BIDS

FAR 14.304-1

Bids submitted after the due date and time specified in the IFB are a perennial source of protests. It is the bidders' responsibility to ensure the timely arrival of bids at the designated place set for receipt of bids. Acceptance of a late bid, no matter how minor the apparent discrepancy, provides a basis for protest by any other bidder. However, there are a few exceptions to the sealed bidding policy of "late is late." Late bids can be accepted only if they fall under one of the following situations:

- The bid was sent by registered or certified mail not later than five calendar days before the specified bid receipt date.
- The bid was sent by mail (or, if authorized, by telegram or facsimile) and the Government determines that the bid was late due solely to mishandling by the Government after receipt at the Government installation.
- The bid was sent by U.S. Postal Service Express Mail Next Day Service no later than 5:00 PM two federal working days prior to the date specified for receipt of bids.
- A late modification to an otherwise successful bid may be considered at any time, if the modification would be more favorable to the Government.

ANSWER TO THE LATE BID QUERY

Let's take a break here to answer that question on the first page of this chapter. Was the CO correct in throwing out the late bid? The receipt indicates it was sent at least two working days prior to the bid opening date. However, the key is how it was sent, not when it was sent! Since WeSell Office Furniture Company sent it by Federal Express, not U.S. Postal Service Next Day Service, it does not fall under the criterion outlined above. The CO was correct in not considering the bid.

PROCESSING BIDS

FAR 52.214-7

Acceptable evidence to establish the date of mailing a late bid, modification, or withdrawal sent either by registered or certified mail or Express Mail Next Day Service (For USPS Express Mail, the date entered by the post office receiving clerk on the Express Mail label is also required) is a U.S. Postal Service postmark on the wrapper and on the original receipt. (Canadian Postal Service postmarks on registered or certified mail are also allowed, if the package was mailed in Canada.) The date must be legible or the bid, modification, or withdrawal will be considered late. A postmark is defined as a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable as having been placed there by an employee of the U.S. or Canadian Postal Services. Therefore, bidders should request that the postal clerk place a hand cancellation “bull’s-eye” postmark on both the receipt and the envelope or wrapper.

FAR 14.304-2

After it is determined that a bid, modification of a bid, or withdrawal of a bid is received late and it is clear from available information the bid cannot be considered, the CO shall promptly notify the bidder. However, when a late submission is transmitted to a contracting office by registered or certified mail or by USPS Express Mail and is received before award, the bidder shall be promptly notified substantially as follows:

“Your bid in response to Invitation for Bids Number ____ dated ____ for ____ [insert subject matter or short title] was received after the time for opening as specified in the Invitation. Accordingly, your bid will not be opened or considered for award unless there is received from you by ____ [insert date] the original post office receipt for [insert one of the following, as appropriate]:

(a) registered or certified mail showing a date of mailing not later than the fifth calendar day before the date specified for opening (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th or earlier); or

(b) USPS Express Mail showing a date of mailing not later than 5:00 PM two Federal working days prior to the date specified for opening.”

FAR 52.214-32

If the contracting office is located outside the United States or Canada, the Late Submissions, Modifications, and Withdrawal of Bids (Overseas) provision is used in the Solicitation. It does not make reference to the above U.S. or Canadian Postal Service procedures.

LATE BIDS**FAR 14.304-4**

The following shall be included in the contracting office's files with respect to each late bid, modification of bid, or withdrawal of bid:

- A statement of the date, hour of mailing, filing, or delivery;
- A statement of the date and hour of receipt;
- The determination, with supporting facts, as to whether or not the late bids were considered;
- A statement of the disposition of the late bid; and
- The envelope, or other covering, if the late bid was considered for award.

Exhibit 5-8. Late Bids.

FAR 14.304-3

Hold all unaccepted late bids, late modifications, or late withdrawals unopened, until after award, and retain them with the other unsuccessful bids. However, return any bid bond or guarantee to the bidder.

5.5 DETERMINE BID RESPONSIVENESS

Any bid that fails to conform to the essential requirements of the IFB shall be rejected. When bids are received, first analyze the bids to determine which bids are responsive. A bid that fails to comply with the original specifications is considered a nonresponsive bid and will not be considered for award. If you have a large number of bids, you may want to determine the apparent low bid(s) before determining responsiveness in order to save time or:

- Examine all timely bids that are received to determine if they conform to the requirements of the IFB.
- If a bid is nonresponsive, set it aside and do not consider it for evaluation or award
- Next look at all the responsive bids, begin evaluation, and determine who is the lowest responsive bidder.

PROCESSING BIDS

5.5.1 Examples of Nonresponsive Bids

FAR 14.404-2

Any bid that fails to conform to the essential requirements of the IFB shall be rejected. However, if a deficiency is not substantive, it is considered a minor informality or irregularity, and the bid can still be considered for award (see Section 5.5.2 for examples of minor informalities and irregularities).

Examples of nonresponsive bids include:

1. The bid fails to conform to the delivery schedule specified in the solicitation.
2. The bid offers supplies or services that do not meet the essential requirements of the solicitation.
3. The bid fails to conform with the requirements in the solicitation as to timeliness of submission or method of submission (e.g., a bid submitted via telegraph when such means has not been authorized).
4. The bid fails to state a price or states that the price will be the price in effect at the time of delivery.
5. The bidder attempts protection against increased costs by not clearly indicating the total price to the Government.
6. The bidder adds conditions to the bid that were not authorized. (For example, the bidder stipulates that bid is to be considered for award only if, before the date of award, the bidder receives or does not receive an award under a separate solicitation.)
7. The bidder attempts to limit the rights of the Government under any of the Government's contract clauses.
8. The bidder stipulates that the Government should determine whether or not the bidder's product meets the applicable Government specifications.
9. Bidder may have used its own bid form or letter and did not accept all terms and conditions stated in IFB (e.g., failure to sign the Procurement Integrity certification).
10. Bidder failed to submit a required bid guarantee.

FAR 28.101-4

Sometimes it is necessary to analyze a bid to determine whether it is nonresponsive (e.g., item number 2). In other instances, nonresponsiveness can easily be ascertained and the bid rejected (e.g., item numbers 4, 5, and 7).

5.5.2 Resolve Minor Informalities and Irregularities

Examples of minor deficiencies include failure of a bidder to:

- Provide information concerning the number of its employees.
- Acknowledge receipt of an amendment to the IFB, but only if—
 - It is clear within the bid that the amendment was in fact received, or
 - The amendment has no effect or a negligible effect on price, quantity, quality, or delivery of the bid items.
- Return the number of copies of signed bids required by the IFB.
- Sign its bid, but only if—
 - The unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid (e.g., a bid guarantee or a signed letter from the bidder accompanies the bid and clearly refers to and identifies the bid itself), or
 - The firm submitting a bid has formally adopted or authorized the execution of documents by typewritten, printed, or stamped signature before the date set for bid opening and submits evidence of the authorization.
- Furnish affidavits concerning parent company and affiliates, if required.
- Execute the certifications with respect to Equal Opportunity and Affirmative Action Programs.

PROCESSING BIDS

FAR 14.405

In some cases where the bidder refuses to correct the irregularity (e.g., the EEO certification), the CO can deem the bid nonresponsive and reject the bid. If a deficiency is not substantive, it is considered for award.

5.5.3 Reject Nonresponsive Bids

A bid that follows any of the examples of nonresponsiveness listed in Section 5.5.1 must be rejected. The bidder shall be notified of the rejection and the reason in writing.

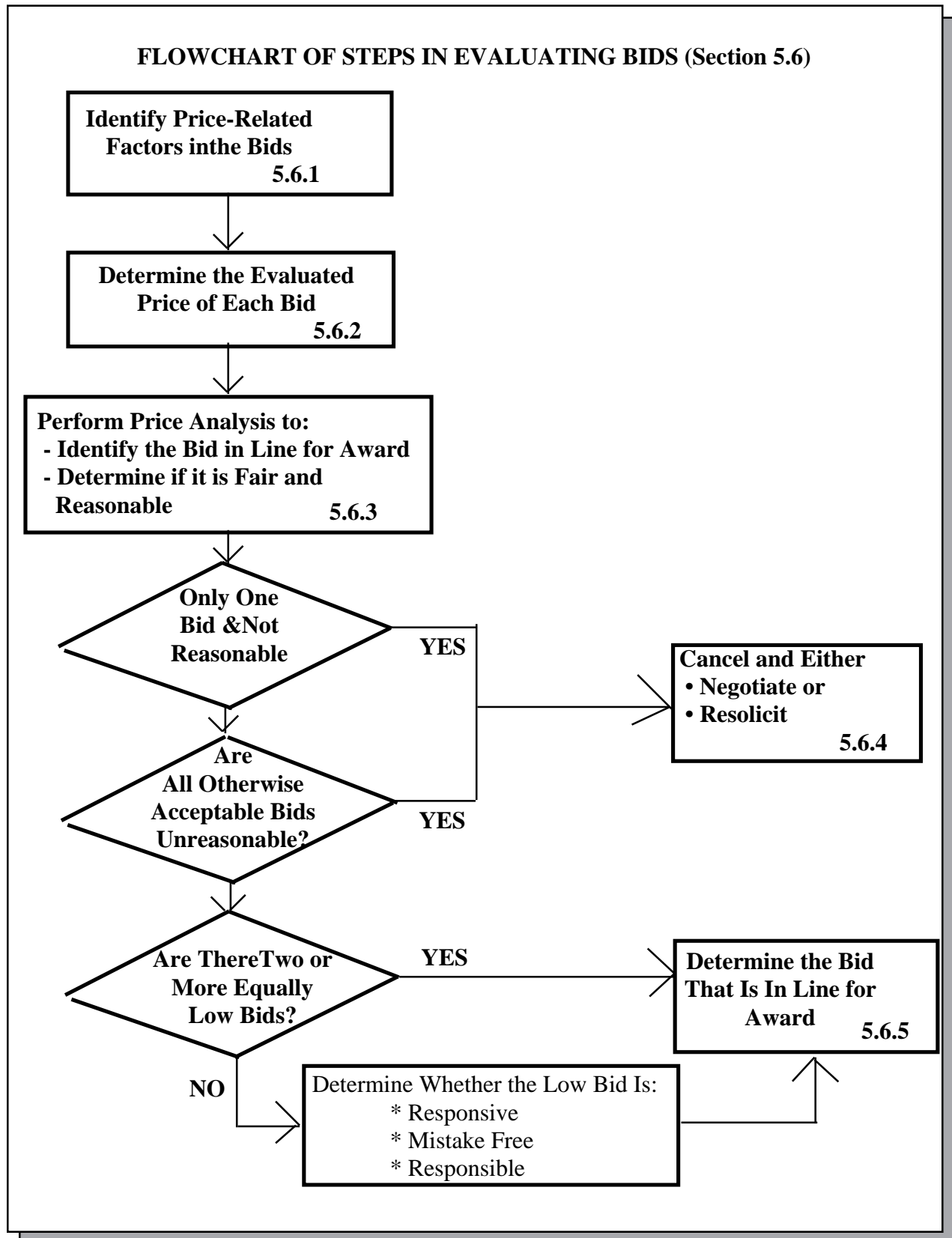


Exhibit 5-9. Flowchart on Evaluating Bid Prices.

5.6 EVALUATE BID PRICES

5.6.1 Identify Price-Related Factors in the Bids

When contracting by sealed bidding, award will be made to that responsible bidder whose bid, conforming to the IFB (responsiveness), will be most advantageous to the Government considering **only price and price-related factors** included in the invitation. A price-related factor is any factor which could have an impact on one or more bidders' prices. You must evaluate the bid prices taking into consideration those price-related factors stated in Section M, "Evaluation for Award," of the IFB. For this reason, the lowest bid as shown on the abstract of offers at the time of bid opening may not be the lowest bid after application of the factors.

Examples of price-related factors are shown in Exhibit 5-10.

PRICE-RELATED FACTORS

FAR 14.201-8

- Foreseeable cost or delays to the Government resulting from such factors as differences in inspection, locations of supplies, and transportation.
- Changes made, or requested by the bidder, in any of the provisions of the IFB, if the change did not constitute a ground for rejection under FAR 14.404.
- Economic advantage of one or multiple awards.
- Federal, State, and Local Taxes.
- Origin of supplies (e.g., foreign-made vs U.S.).

Exhibit 5-10. Price-Related Factors.

5.6.1.1 Foreseeable Costs or Delays to the Government

The price-related factor “foreseeable cost or delays to the Government” is not intended to be as limiting as it might seem. Inspection, location of supplies, and transportation are frequently used factors, but there are many others, including:

- Cost of ownership (life-cycle costs), including maintenance costs, energy efficiency, useful life, etc.
- Lease vs purchase price comparison.
- Options.
- Incremental pricing (separate prices for different lots of supplies).

The above and other price-related considerations may be considered when determining the bid that is most price-advantageous to the Government. If you choose to use special price-related evaluation factors for award, be sure to:

- **Clearly state the factor(s) in Section M of the IFB, and**
- **Have a realistic, dependable formula for computing a price or cost for each such factor.**

If you plan to buy supplies and delivery will be F.O.B. origin, you may state in Section M of the IFB that cost of transportation (shipping costs) to destination is a price-related evaluation factor.

When evaluating the bids received, consider the cost of transportation from the point of origin (each bidders’ point of shipment) to destination to determine which overall price is most favorable to the Government. For example:

| Bidder | Bid Price | Transportation | Total |
|--------|-----------|----------------|----------|
| A | \$65,000 | \$650 | \$65,650 |
| B | \$63,900 | \$1,800 | \$65,700 |

PROCESSING BIDS

In the example, Firm B was the apparent low bidder at time of bid opening but, after applying the price-related factor, the most advantageous price to the Government will result from award to Firm A.

5.6.1.2 Changes Made or Requested by Bidders

Another price-related factor could be “changes made, or requested by the bidder, in any of the provisions of the IFB, if the change does not constitute a ground for rejection under FAR 14.404.”

This price-related factor is very difficult to use because any bid that is not in conformance with the requirements of the IFB might be considered nonresponsive. Use this price-related factor only when you have made it clear in the IFB that certain changes will be considered, such as when the IFB authorizes specification changes provided essential requirements are met.

For example: The specification is for a 10,000 btu heater to operate on 110 volts, and the IFB has authorized specification changes provided essential requirements of the heater are met. The low bidder offers a 10,000 btu unit that operates on 220 volts. As part of its bid the bidder requests that the specification be changed to show operation on 220 volts. The next low bid is for 110-volt unit. The low bid could be considered if the operating costs of the 220-volt unit are less than or no more than the costs for the 110-volt unit, including any cost to provide a 220-volt outlet if required.

5.6.1.3 Economic Advantages of Multiple Awards

If you determine before issuing the IFB that you might issue multiple awards, you should include the provision for multiple awards as a price-related factor in Section M of the IFB.

FAR 14.201-8(c)

The CO shall assume, for the purpose of making multiple awards, that \$510 would be the administrative cost to the Government for issuing and administering each contract awarded under an IFB. Individual awards shall be for the items or combination of items that result in the lowest aggregate cost to the Government, including the assumed administrative cost.

You cannot make multiple awards, unless multiple awards appears as a price-related factor in Section M of the IFB.

5.6.1.4 Federal, State, and Local Taxes

Tax law is very complex and it is possible in certain cases to get exemptions from taxes. For example, excise taxes on certain fuels may be exempted under certain conditions and the CO should consider soliciting prices:

- On a **tax exclusive** basis when it is known that the Government is exempt from these taxes and the exemption is at least \$100.
- On a **tax inclusive** basis when no exemption exists or the exemption is less than \$100.

FAR 29.201

FAR 52.229-3 is the tax clause usually used in sealed bidding. It states that the contract price **will include** all applicable federal, state, and local taxes and duties.

If taxes are likely to be a significant problem in an IFB, you should check with counsel for guidance before you decide to make taxes a price-related factor in the IFB.

5.6.1.5 The Buy American Act

The Buy American Act requires that, with certain exceptions, only domestic end products shall be acquired for public use. An end product is defined as the materials, articles, and supplies to be acquired for public use under the contract. The CO shall insert the provision at FAR 52.225-1 and the clause at FAR 52.225-3 in IFBs as prescribed at FAR 25.109.

FAR 25.1

BUY AMERICAN ACT CRITERIA

FAR 25.101 and 25.102

- Provides for the use of domestic end products.
- The product must be:
 - An unmanufactured end product, mined or produced in the U.S.
 - An end product manufactured in the U.S., if the cost of its components mined, produced, or manufactured in the U.S. exceeds 50 percent of the cost of all its components.

Exhibit 5-11. Buy American Act Criteria.

Even though the Act established a strong preference for the acquisition of domestic end products, it also specifies exceptions to the preference. The exceptions listed in the FAR are indicated at Exhibit 5-12. There may be additional exceptions under the Trade Agreements Act.

EXCEPTIONS TO THE BUY AMERICAN ACT

FAR 25.102

- Supplies purchased for use outside of the U.S.
- Unreasonable cost of the domestic end product.
- Purchasing in the U.S. would not be consistent with the public's best interest.
- Product is not mined, produced, or manufactured in the U.S. in sufficient and reasonably available quantities or satisfactory quality.
- Supplies are for commissary resale.

Exhibit 5-12. Exceptions to the Buy American Act.

When the CO is evaluating bids on both foreign and domestic end products, the regulations provide the following guidelines on how to compare the bids:

- The price of a domestic end product, from a large business that is not in a labor surplus area, of a domestic end product is considered unreasonable if it exceeds the foreign price by 6 percent.
- The price of a domestic end product that is manufactured by a small business or any labor surplus area concern is considered unreasonable if it exceeds the foreign price by 12 percent.

The above comparisons shall be made on an item-by-item basis or made to any group of items on which award may be made, as specifically provided in the solicitation. Note that and the foreign bid prices shall include applicable import duties.

During evaluation, the CO shall add either the appropriate 6 or 12 percent price factor to the foreign bid price as shown in the examples below. In contracts in excess of \$250,000, the agency head must determine whether the cost is unreasonable if the award would be made to a domestic concern after application of the 12 percent factor.

Examples of bid adjustments for Buy American comparisons:

Example #1

- | | |
|--|---------------------------|
| • Big business domestic bid (not a labor surplus area firm) | \$28,000 |
| • Foreign bid | \$26,000 (including duty) |
| Plus 6% adjustment | <u>1,560</u> |
| | \$27,560 |
| Award to foreign bidder | |

PROCESSING BIDS

Example #2

| | | |
|---|--|---------------------------|
| • | Big business domestic bid (labor surplus area firm) | \$28,000 |
| • | Foreign bid | \$26,000 (including duty) |
| | Plus 12% adjustment | <u>3,120</u> |
| | | \$29,120 |
| | Award to domestic bidder | |

Example #3

| | | |
|---|-----------------------------|---------------------------|
| • | Small business domestic bid | \$28,000 |
| • | Foreign bid | \$26,000 (including duty) |
| | Plus 12% adjustment | <u>3,120</u> |
| | | \$29,120 |
| | Award to domestic bidder | |

Example #4

| | | | |
|--------|---|---|-------------------------------|
| Firm A | — | Big business domestic bid(not a labor surplus area firm) | \$32,000 |
| Firm B | — | Big business domestic bid (labor surplus area firm) | \$31,000 |
| Firm C | — | Small business domestic bid (not a labor surplus area firm) | \$30,000 |
| Firm D | — | Small business domestic bid (labor surplus area firm) | \$30,000 |
| Firm E | — | Foreign bid | \$29,000 |
| | | Plus 6%: | $\$1,740 + 29,000 = \$30,740$ |
| | | Plus 12%: | $\$3,480 + 29,000 = \$32,480$ |

Award to Firm D. Both Firms C and D benefit from the 12% adjustment but, because they are tie bids, the preference is for Firm D, which is also a firm located in a labor surplus area. The foreign bid is always compared with the lowest acceptable domestic offer.

The Buy American certification shown at FAR 52.225-2 is used by the bidder to identify products that are not domestic end products. The clause shown at FAR 52.225-3 authorizes the CO to add the appropriate price factor to the foreign bid price. The Buy American certificate provision shall be inserted in solicitations for the acquisition of supplies, or for services involving supplies, for use in the U.S. An exception to that requirement applies to acquisitions made under the Trade Agreement Act of 1979.

5.6.1.6 The Trade Agreements Act of 1979

FAR 25.4

The Agreement on Government Procurement and the Trade Agreements Act of 1979 are implemented in the FAR at Subpart 25.4. FAR 25.4 also covers Executive Order 12260, the Buy American Act, the Balance of Payments Program, North America Free Trade Agreement, the Caribbean Basin Economic Recovery Act, EO 12849 MOU between USA and EEC on Government Procurement, and Article 15 of the U.S.—Israel Free Trade Area Agreement. Application of the coverage at FAR 25.4 is complex and requires knowledge and experience beyond the scope of this text. You will need to rely on agency procedures and guidance to ensure total compliance with all facets of the Trade Agreements Act.

There are, however, award fundamentals of the Trade Agreements Act that you should be aware of:

1. The Trade Agreements Act provides for:
 - an exception from the percentile adjustments applicable to the evaluation of bids under the Buy American Act, and
 - the purchase of products produced in designated countries only
2. The dollar threshold at or over which the exception applies is determined from time to time by the U.S. Trade Representative. It is published in the Federal Register for implementation through agency procedures. (\$172,000 as of 1-1-90)
3. The exception does not always apply; for example; it does **not** apply to:
 - Offers for eligible products below the dollar threshold.

PROCESSING BIDS

- Purchases made under small or small disadvantaged business programs.
 - Purchases listed as exceptions under FAR 25.403.
4. Most, but not all, agencies or activities within agencies are covered by the Act. See FAR 24.406 for covered agencies.
 5. If the Act is applicable, include the provision at FAR 52.225-8 and the clause at 52.225-9 in the IFB.

5.6.1.7 Economic Price Adjustment

FAR 14.407

The economic price adjustment (EPA) clause may be used when:

- There is serious doubt concerning the stability of market conditions during the period of the contract, and
- Contingencies that would otherwise be included in the contract price can be identified and covered as a separate item in the contract.

Price adjustment should be restricted to industry-wide contingencies that are beyond the contractor's control.

When an IFB does not contain an economic price adjustment clause, a bidder must propose one with a ceiling price that will not be exceeded. If the bidder does not propose a ceiling, the bid will be rejected. The bid will be evaluated on the basis of the maximum possible economic price adjustment for the period of the quoted base price.

When the economic price adjustment clause is included in the solicitation, some special evaluation procedures are required. Exhibit 5-13 illustrates this decision process.

| DECISION TABLE ON EVALUATING BIDS THAT INCLUDE THE ECONOMIC PRICE ADJUSTMENT CLAUSE | |
|---|--|
| CONDITION: | PRESCRIBED ACTION: |
| No bidders elect to use the clause without the EPA added | Evaluate bids on the basis of the quoted prices |
| Bidder increases the maximum percentage of escalation outlined in the IFB | Reject bid as non-responsive |
| Bidder deletes the EPA clause | Reject bid as nonresponsive |
| Bidder decreases the maximum percentage of escalation stipulated in the IFB | Evaluate bid at the base price on an equal basis with other bids that did NOT reduce the ceiling |
| Bidder will only accept the maximum percentage of escalation upwards, but not downwards | Reject bid as nonresponsive |

Exhibit 5-13. Decision Table on Evaluating Bids That Include the Economic Price Adjustment Clause.

5.6.1.8 Discounts

Quantity Discounts: Quantity discounts are offered by vendors to customers who purchase in large quantities. Quantity discounts come in two categories: cumulative and non-cumulative. **Cumulative quantity discounts** are based upon the total dollar volume of purchases over a stated period of time. In this case, the bidder is encouraging repeat business from the Government so that the highest possible discount can be offered. A **non-cumulative quantity discount** is only in effect for a single order. It may be based on the physical quantity or on the dollar volume of a single order. The purpose of the non-cumulative quantity

PROCESSING BIDS

discount is to provide an incentive for the Government to order in large quantities. Although this represents savings to the bidder, it could result in greater expense to the Government, such as in inventory costs.

The Government must state their minimum requirements up front and enter into a firm-fixed price (or FFP with EPA) contract when sealed bidding procedures are used. Bidders may offer quantity discounts based on the acceptance of all or selected groups of items. You may see it offered as:

- Prices bid on item 1 covering 150 widgets, item 2 covering 150 widgets, and item 3 covering 250 widgets (total 500 widgets) shall be reduced as follows:

If awarded a minimum quantity of 300 widgets a 10% bid price discount covering all 500 widgets is offered or if a total of 500 widgets is awarded, a 20% bid price discounts is offered.

The example indicates how a bidder can covert their normal quantity discount program to a method acceptable for evaluation under a firm-fixed price contract.

It should be noted that quantity discounts offered as cumulative and non-cumulative may be accepted by the Government if the discounts were not used to identify the lowest bidder for award.

Prompt Payment Discounts: A prompt payment discount is a discount offered by a contractor if the Government pays its bills in accordance with the prompt payment terms in the contract. Prior to 1982, the use of a prompt payment discount as a price-related factor was allowed. However, the regulations were revised because often the payments were not made in time to take advantage of the discount. The Government realized that to continue evaluating discounts that may never materialize was unrealistic.

Although prompt payment discounts are not evaluated, any discount offered will form part of the award, and will be taken by the Government payment center if payment is made within the discount period specified by the bidder.

5.6.1.9 All or None

“All or None” Bids: A bidder may add a condition to its bid that states any award will be accepted only if the Government awards the entire contract to it. This is called awarding on an “all or none” basis and the reasons for doing so are simple.

- Contractor production costs for delivering several items together may be much less than the total cost for delivering the items individually.
- An all-or-none award means that the bidder has only one large order to process.

Bids submitted with an “all or none” qualification will be evaluated and compared with all other bids to determine which will be the most advantageous to the Government. The evaluation will depend on the type of contract. Definite quantity contracts are evaluated differently from indefinite quantity contracts, regardless of delivery requirements.

“All or None” — Applicable to Definite Quantity Contracts (Regardless of Delivery): A bid will be evaluated as follows:

- The lowest acceptable evaluated bid, exclusive of the “all or none” bid, will be determined with respect to each line item (or group of items when the IFB provides for aggregate awards).
- The total cost of all these line items will be compared to the evaluated “all or none” bid to determine who is the overall lowest bidder.

“All or None” — Applicable to Indefinite Quantity Contracts/ Requirements: A bid will be evaluated:

Only if the bid is low on each item to which the “all or none” bid is made applicable. The reason for this is that since quantities are unknown, award is being made only on unit prices and it is therefore impossible to know whether “all or none” will be the lowest. The term “item” as used here refers only to items which, under the terms of the IFB, may be independently awarded. This does not include any group of items on which an award is to be made in the aggregate.

PROCESSING BIDS

When bids are obtained on related items (i.e., various laboratory supplies), the Government may stipulate in the IFB that it reserves the right to award on an “all or none” basis. Then, the Government may purchase from the bidder who submits the lowest aggregate price, rather than issue a purchase order to each supplier on the basis of the lowest quotation on each item. Such purchasing on the basis of low aggregate cost may save money, if the degree of complexity and the cost of awarding and administering the contract offsets minor bid price differences.

5.6.2 Determine the Evaluated Price of Each Bid

The evaluated bid price is the price that will actually be used in evaluating a bid against other bids. For example, the IFB may tell the bidders to submit a f.o.b. origin price. To that price, you may add transportation costs (which you would get from freight rate specialists). The sum of price and transportation costs is the evaluated price. FAR 52.214-10 advises bidders how the CO will proceed in evaluating bids.

The CO will evaluate the bids and award the contract to the responsible bidder whose bid, conforming to the IFB, will be most advantageous to the Government considering **only** price and the price-related factors specified elsewhere in the IFB.

The CO may accept any item or group of items of a bid, unless the bidder qualifies the bid by specific limitations. Unless otherwise provided in the schedule, bids may be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the bidder specifies otherwise in the bid.

FAR 14.201-8

In the following example, the administrative cost to award a contract is assumed to be \$500. In this case, an award in the aggregate to Bidder B will result in a savings to the Government. The entire contract shall be awarded to Bidder B.

EXAMPLE #1

| BIDDERS | | | | |
|------------------------------|------------|--------------|-------------|---------------|
| Item No. | A | B | C | Low Bid* |
| 1 | \$125* | \$130 | \$133 | \$125(A) |
| 2 | 150 | 144* | 147 | 144(B) |
| 3 | <u>148</u> | <u>143</u> | <u>140*</u> | <u>140(C)</u> |
| Totals | \$423 | \$417 | \$420 | \$ 409 |
| Cost to Issue Contract(s) | | <u>\$500</u> | | <u>\$1500</u> |
| Total Cost | | \$917 | | \$1909 |

* apparent low price for item

To determine whether purchases should be made on low aggregate cost, it is necessary to determine the administrative cost of the method of purchase. It may not always be advantageous to award “all or none.” Bidders should be advised that the Government reserves the right to award (or not to award) on that basis after evaluation of the bids.

PROCESSING BIDS

Example #2 shows a case lacking an “all or none” qualification by a bidder, in which award would be made on an item-by-item basis.

EXAMPLE #2

| BIDDERS | | | | |
|------------------------------|--------------|--------------|----------------|-----------------|
| Item No. | A | B | C | Low Bid* |
| 1 | \$8,000* | \$9,000 | \$8,850\$ | 8,000(A) |
| 2 | 6,600 | 5,700* | 6,050 | 5,700(B) |
| 3 | <u>5,980</u> | <u>5,900</u> | <u>5,600 *</u> | <u>5,600(C)</u> |
| Totals | \$20,580 | \$20,600 | \$20,500 | \$19,300 |
| Cost to Issue Contract(s) | | | <u>\$500</u> | <u>\$1,500</u> |
| Total Cost | | | \$21,000 | \$20,800 |

Example #3 depicts a situation with the same bids, the addition of an all-or-none qualification from Bidder C:

EXAMPLE #3

| BIDDERS | | | | |
|------------------------------|--------------|---------------|--------------|---|
| Item No. | A | B | C | Low Bid* Available for Separate Award |
| 1 | \$8,300* | \$9,000 | \$8,850 | \$8,300(A) |
| 2 | 6,600 | 5,700* | 6,050 | 5,700(B) |
| 3 | <u>5,980</u> | <u>5,900*</u> | <u>5,600</u> | <u>5,900(B)</u> |
| Totals | \$20,880 | \$20,600 | \$20,500 | \$19,900 |
| Cost to Issue Contract(s) | | | <u>\$500</u> | <u>\$1,000</u> |
| Total Cost | | | \$21,000 | \$20,900 |

The result is an award of Item 1 to Bidder A and Items 2 and 3 to Bidder B. Even though Bidder C has the lowest price for Item 3, it receives no award because the bid stipulated award would be accepted only for three items. In evaluating bids, you must be sure that any “all or none” qualifications have been fully considered.

At this point, you have:

- Evaluated bids using price-related factors, and
- Determined the evaluated prices on each bid and identified the lowest bid.

PROCESSING BIDS

Now the issue is the fairness and reasonableness of the lowest evaluated prices bid. Your analysis of price reasonableness will lead you to conclude that the lowest price bid is either: reasonable, unreasonably low, or unreasonably high. Exhibit 5-14 illustrates the actions you should then take.

| DECISION TABLE ON REASONABLENESS OF BID PRICES | |
|--|--|
| CONDITION | ACTION |
| If the lowest bid price is: | Then: |
| Reasonable | ▷ Determine whether the bid is from a responsible bidder (See Chapter 7) |
| Unreasonably low | ▷ Determine whether there has been a mistake in bid (See Chapter 6) |
| Unreasonably high | ▷ Reject all bids and cancel the IFB (See Chapter 4, Exhibit 4-10) |

Exhibit 5-14. Decision Table on Reasonableness of Bid Prices.

5.6.3 Perform Price Analysis

FAR 14.407-2

Before awarding the contract, you must determine that the prices offered are fair and reasonable. You can presume the prices bid are reasonable if all of the following are true:

1. Specifications were not restrictive, **and**
2. Two or more responsive, responsible bids were received and no one bidder had a decided advantage, **and**
3. Bids were submitted independently, **and**
4. Prices bid did not vary significantly from the expected price. This “expected bid price” is the lowest probable price that could have been expected, given market prices for the same or comparable goods, price histories, and the like.

FAR 15.805-2

The method used by the Government in sealed bidding to determine the expected price is called “price analysis.” This the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.” Generally a sound price analysis will be based on comparisons of several different types of data obtained from sources other than the low bidder and will support the price bid.

Price analysis techniques suggest for use in sealed bidding are shown in Exhibit 5-15. A discussion of each technique follows the exhibit.

Your determination of price reasonableness will be affected by your personal knowledge, and the information available within your contracting activity, of the market and market conditions of the supplies or services being acquired.

5.6.3.1 Compare Bid Prices Received The C.O. may use price analysis techniques (edited for application to sealed bidding) as shown in Exhibit 5-15. One or more of these techniques may be used in determining price reasonableness.

PRICE ANALYSIS TECHNIQUES

- Compare bid prices received in response to the IFB.
- Compare prior bid prices and contract prices with current bid prices for the same or similar items or services.
- Use rough “yardsticks” (e.g., dollars per pound) to highlight significant inconsistencies between reasonable prices and bid prices.
- Compare competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.
- Compare bid prices with the independent Government cost/price estimate for the specific acquisition.

Exhibit 5-15. Price Analysis Techniques.

PROCESSING BIDS

Although competitors are motivated to estimate their costs accurately yet propose a price that is low enough to win the competition, the mere presence of competition is inadequate to assure the proposed prices are fair and reasonable. However, there is substantially greater assurance that a low price is reasonable when the number of responsive, responsible bids increases. A comparison of the bids does not necessarily establish reasonableness of the low bid but the existence of “adequate price competition.”

5.6.3.2 Historical Data Comparisons

Your determination of price reasonableness will be affected by your personal knowledge of the supplies or services being acquired. Persons contracting repetitively for a given commodity (or class of commodities) will have a better insight into the price reasonableness of that commodity than would a person who only occasionally buys that item. Other agencies can provide substantial information concerning prices and costs. One way to track which other office might have similar data is through the CBD.

5.6.3.3 Rough Yardstick Comparisons

“Rough yardstick” comparisons such as dollars per pound, per square foot, per loaded labor-hour and other similar units has increased with the development and use of quantitative analysis in contract pricing. The estimates are useful in identifying gross inconsistencies that signal the need to alter assumptions developed from other comparisons and establish a common denominator between dissimilar offers.

As the availability of “hard” pricing information decreases, the use and importance of cost-estimating rises. This yardstick measurement should not be used as the only comparison for supporting a determination.

5.6.3.4 Market Comparisons

The supplies or services being acquired will also affect the difficulty of determining price reasonableness. For example, the prices for manufactured items customarily found in supplier’s inventories will tend to be stable whereon the prices for products such as fresh or packaged foods will tend to fluctuate seasonally.

This category consists of a broad collection of potential comparisons that can provide supporting perceptions about prices, market trends, and

advances in technology. Such resources as newspapers, trade journals, market indexes, competitive published price lists, published market prices of commodities, and discount or rebate arrangements can be used to validate assumptions, identify the need for adjustment, and even implement adjustments in some cases.

5.6.3.5 Government Estimates

A comparison with a Government estimate can be used to verify assumptions or identify potential discrepancies. To be useful, however, the basis for the estimate and its reliability must be established. The important things to find out are how the estimate was made, what information and tools were used, where the information came from, and how earlier estimates stacked up against resulting contract prices. It may also help to know who made the estimate.

The procurement request estimate can be a valid standard for comparison if it is based on a realistic engineering analysis or if the originator has used a reasonable past purchase price and identified the quantity.

Too often, procurement request estimates are not reliable. Stock list prices, a frequently used source, can be misleading unless they are continually updated and annotated to indicate quantity and production rate. Lacking any other basis the originator may occasionally make an outright guess—obviously not a basis for a reliable price comparison.

APPROACHES TO DETERMINING PRICE REASONABLENESS

- Learn about the supplies or services you are buying.
- Utilize your personal knowledge and that of others in your contracting activity.
- Apply the price analysis techniques shown in Exhibit 5-16 to identify the expected price and determine whether the lowest price bid varies significantly from the expected price.
- Account for any significant variance between the expected price and the lowest price bid.

Exhibit 5-16. Approaches to Determining Price Reasonableness.

PROCESSING BIDS

5.6.4 Accounting for Differences Between the Expected Price and the Lowest Price Bid.

Using price analysis techniques, you can determine the expected price the Government should pay. If the low bid price varies significantly from the expected price, the next question is why? Upon the answer to that question turns the matter of reasonableness.

The following are among the factors that may account for significant variances between the expected price and the lowest price bid. The list is not exhaustive, but it does include those situations that occur the most often. Each is followed by an indication of the usual impact on price.

- The bidder is a more efficient producer than the competitors—resulting in an unexpectedly low price that is nonetheless reasonable.
- The bidder has recently invested in new technology for production—resulting in an unexpectedly low price that is nonetheless reasonable.
- The bidder has been able to salvage scrapped equipment and bring it up to specification—resulting in an unexpectedly low price that is nonetheless reasonable.
- Bidder did not accurately estimate the costs of meeting the requirement or does not understand the requirement—resulting in an unexpectedly low price.
- Bidders are in collusion—resulting in an unexpectedly high price.
- The bidder is nonresponsible—resulting in an unexpectedly low price.
- The bidder pays lower wages and benefits than the competitors—resulting in an unexpectedly low price that may or may not be reasonable, depending on whether the low wages result from a violation of labor laws. This is another example of a situation in which low prices may be linked to the issue of non-responsibility.
- Bidder submitted a “buy-in” price that is likely (although not necessarily certain) to result in a loss on that contract—resulting in an unexpectedly low price. This is another example of a situation in which low prices may be linked to the issue of non-

responsibility). (Chapter 7 discusses buy-in bids as a factor in determining responsibility.)

- The IFB contained a defective or non-commercial specification. Bidders are then competing for a non-standard item—resulting in higher prices than expected.
- The Government entered the market at the wrong time; i.e., wrong season, at a time of excess demand and no additional capacity; wrong time in the business cycle for that market—resulting in higher prices than expected.
- The Government used a firm-fixed price contract when a fixed price contract with economic price adjustment would have resulted in a lower base price to the Government, given market conditions and uncertainties. This would be true when the bidders have made “worse case” assumptions about inflationary trends and inflated the “firm-fixed prices” in their bids accordingly—resulting in higher prices than expected.
- The Government used other terms and conditions not customary for the market; e.g., unreasonably tight delivery dates, non-standard warranty requirements, non-standard packaging and marking requirements, etc.—resulting in higher prices than expected.
- The Government failed to publicize the procurement outside the CBD for markets that do not follow the CBD—resulting in higher prices than expected.
- The Government set an overly brief IFB period—resulting in higher prices than expected.

Meaningful comparison of two or more prices requires that three conditions exist:

- The items must be the same or at least reasonably similar.
- The environments within which prices exist must be comparable.
- The price used for comparison purposes was determined to be fair and reasonable.

PROCESSING BIDS

FAR 15.805.2

At a minimum, you should consider differences in:

- specification requirements
- quantity ordered
- time for delivery
- Government-furnished material
- experienced trends of improvement in production efficiency

When the two conditions are not present, the CO must attempt to impose comparability through the use of adjustment techniques. (These techniques are covered in detail in the Price Analysis Course.) Broadly speaking, the two overall tasks must be completed in order to impose comparability:

1. Price-related differences must be identified and documented, taking into account the factors affecting comparability
2. Price-related differences must be factored out.

You should now be able to make a price determination. Exhibit 5-16 is a reminder of the approaches to take in making your determination. If there is still a problem, get the assistance of a cost and price analyst or consult with your supervisor.

5.6.5 Equally Low Bids

When two or more bids are equal in all respects, use the guidelines in FAR 14.407-6 to break the tie. The guidelines provide a preference for small businesses and labor surplus area concerns. In the event of a tie, rank bidders in terms of the following order of priority for award:

1. Award to small businesses that are also labor surplus area concerns.
2. Award to other small business concerns.
3. Award to other businesses that are labor surplus area concerns.
4. Other business concerns.

Since these socioeconomic factors provide priority treatment for the bidders involved, a winning bidder is legally bound to perform in accordance with the circumstances that justified the priority. For example, a bidder who wins based on labor surplus area concerns must actually produce the product in the labor surplus area. The awarded contract, in these circumstances, shall include a written agreement stating that the contractor will perform in accordance with the circumstances that justify the priority used to break the tie.

If two or more bids still remain equal, lots shall be drawn to break the tie. The bidders involved shall be given an opportunity to attend the drawing, if time permits. At least three people must witness the drawing. The names and addresses of the witnesses and the person supervising the drawing will become part of the contract file. When an award is made after receipt of equal low bids, the documentation shall describe how the tie was broken.

CHAPTER 6

MISTAKES IN BIDS

THE CASE OF THE \$33,785 MISTAKE

An IFB was issued calling for a government purchase of 25 computer systems. Eight bids were received. The lowest bid (\$277,853) was submitted by the Acme Computer Company. The Government's estimate for the purchase was \$375,000. Six remaining responsive bids ranged in price from \$315,775 to \$398,891. Because Acme's bid was so low, the CO believed that a mistake had been made and asked Acme to verify its bid. Acme alleged that there were errors on items 7, 13, and 25 of its worksheet and submitted the worksheet as evidence after the bid opening. The alleged errors occurred when the prices for the three items were not carried forward into the column used to calculate the total bid price. The mistake totaled \$33,785. The CO allowed the bidder to correct the bid to \$311,638. The second low bidder, Kapow Corporation, protested the award to Acme on the basis that Acme raised its bid by \$33,785 subsequent to bid opening. Kapow argued that there was a violation of contracting procedures.

Did the CO handle the bid correction procedure correctly?

If Acme had not produced the worksheets, what would have been the probable outcome?

Suppose that the bid price for Acme was \$177,853 and the bid price was raised \$133,785 to \$311,638. What would be the probable outcome in this situation?

Could Acme withdraw its bid at this time?

This chapter will provide you with answers to these questions and a thorough explanation of the proper procedures for verifying and correcting bids.

MISTAKES IN BIDS

LEARNING OBJECTIVES

At the completion of this course, you will be able to:

Overall: Identify and resolve any mistakes

Individual:

1. Identify and resolve any mistakes in bids disclosed before award.
 - Examine bids for mistakes.
 - Request verification of bids with suspected mistakes.
 - Instruct the bidder to allege mistake in writing and request withdrawal or modification of the bid, if the bidder alleges a mistake.
 - Determine whether there has in fact been a mistake.
 - Determine whether the intended price can be calculated from available evidence.
 - Prepare recommendation to the agency head or designee.
2. Identify and resolve any mistakes in bids disclosed after award.
 - Recognize mutual mistakes on the face of the offer.
 - Modify the contract to correct mutual mistakes on the face of the offer that are in the Government's favor.
 - Request evidence of the mistake, if the contractor alleges a mistake.
 - Determine whether there has in fact been a mistake and if the CO should have been able to detect it.
 - Determine the corrected price, if a mistake is verified.

Exhibit 6-1. Learning Objectives.

CHAPTER INTRODUCTION

Mistakes in Bids

Unfortunately, mistakes in bid happen frequently and it is extremely important for you to know the correct procedure for handling these mistakes. It is your responsibility to examine all bids for mistakes. This chapter will focus on both mistakes that are disclosed before award and after award.

Steps in Handling Preaward and Postaward Mistakes

The steps in handling preaward mistakes are charted on the following page. After the flowchart, each step is discussed in turn.

MISTAKES IN BIDS

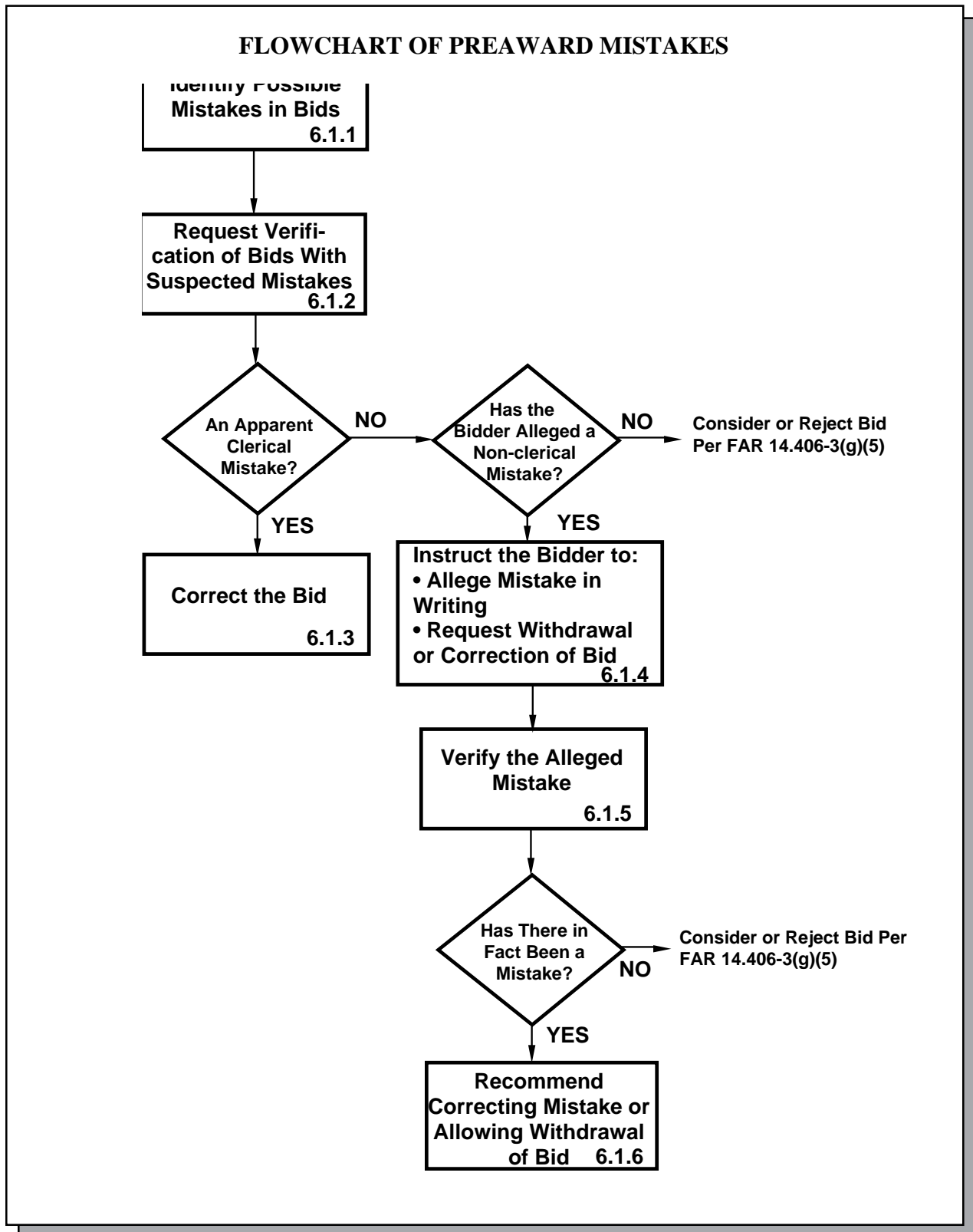


Exhibit 6-2. Flowchart of Preaward Mistakes in Bids.

STEPS IN HANDLING MISTAKES IN BIDS**6.1 PREAWARD MISTAKES IN BIDS****6.1.1 Identify Possible Mistakes in Bids**

Correctly handling mistakes in bids is critically important to the success of the sealed bidding method of procurement. The Government cannot allow the integrity of the sealed bidding system to be jeopardized by improperly accepting a bidder's claim that a mistake was made and thereby allowing the bidder to "work the system" in his/her favor. A bid cannot be changed unless there is clear and convincing evidence that a mistake has been made.

Unfortunately, mistakes in bids happen frequently. You must learn what types of mistakes to look for and the appropriate procedures for correcting them. After bids are opened, it is your responsibility to examine all bids for mistakes. If you find a mistake, you must determine what type of mistake it is and whether it can be corrected.

6.1.1.1 Apparent Clerical Mistakes

Examples of clerical mistakes are shown in Exhibit 6-3.

EXAMPLES OF CLERICAL MISTAKES

- Obvious misplacement of a decimal point.
- Obvious incorrect discounts (e.g., 1%/10 days, 2%/20 days, 5%/30 days).
- Obvious reversal of the price (e.g., F.O.B. destination vs. F.O.B. origin).
- Obvious mistake in designation of unit (e.g., dozen for gross).

Exhibit 6-3. Examples of Clerical Mistakes.

MISTAKES IN BIDS

6.1.1.2 Other Preaward Mistakes

Other mistakes that can occur are those that are not apparent on the face of the bid. For example, upon opening bids you notice that the low bid is extremely low. However, you have no idea why it is so low. It could be the result of:

- Clerical transposition of numbers.
- Mistake in calculation.
- Misunderstanding, on the part of the bidder of the work required.
- Intentionally low bid.

This situation cannot be resolved as in Section 6.1.1.1 because it is not a mistake apparent on the face of the bid — in fact, the low bid might not be a mistake at all!

In any event, the unusually low bid puts you on notice that a mistake might have been made and you must take further action. Also, the bidder might discover that a mistake was made (or alleges so) and asks for corrective action.

6.1.2 Request Verification of Bids with Suspected Mistakes

14.406-1

The CO is required to examine all bids for mistakes. If the CO has reason to believe that a mistake may have been made, he/she must bring the suspected mistake to the bidder's attention and request a verification of the bid. Mistakes cannot be corrected to make them responsive to the solicitation.

Exhibit 6-4 highlights the steps to take in requesting verification of bids with suspected mistakes.

VERIFICATION OF BIDS

- If you suspect a clerical or nonclerical error, identify it to the bidder.
- If you cannot point out a specific error, give the bidder an indication of why he/she is being asked to verify the bid.
- NEVER suggest a specific rewrite or correction to the mistake.

Exhibit 6-4. Verification of Bids.

If you can do so, you should give the bidder an indication of why you suspect that the bid contains a mistake (see Exhibit 6-5). Your request for a verification of the bid could contain a statement as follows:

“Your bid, relative to the Government’s estimate and relative to bids submitted by other bidders, is extremely low. The Government (based on the information you have furnished) cannot determine if you have made an error in your bid submission. Please verify your bid to the Contracting Officer.”

BASIS FOR SUSPECTING A NON-CLERICAL MISTAKE

Advise the bidder, as appropriate:

- That his/her bid is so much lower than the other bids or the Government’s estimate as to indicate a possibility or an error.
- Of important or unusual characteristics of the specifications (that might have been over looked).
- Of changes in requirements from previous purchases of a similar item.
- Of other data proper for disclosure, that will put the bidder on notice of the suspected mistake.

Exhibit 6-5. Basis for Suspecting a Non-Clerical Mistake.

MISTAKES IN BIDS

If the basis for suspecting a mistake is only a discrepancy between the low bid and other bids received, you should bring the discrepancy to the attention of the low bidder only. It is possible that you may have more than one bid being checked for mistakes and verified. However, you should not routinely request low bidders to verify their bids, as this is very time consuming. Request a verification from the low bidder only when a mistake is genuinely suspected and awarding the contract without verifying the mistake would be improper.

If the bid is verified, you shall consider the bid as originally submitted. If that bid remains the low, responsive bid submitted by a responsible bidder, you will make the award to that bidder. However, if you feel that the bid is so far out of line, or other indications of error are so obvious that award would be unfair to the bidder or to other bidders, you shall no longer consider the bid.

Should the verification process take so long that bids are likely to expire before an award can be made, you should request those bidders whose bids might become eligible for award to extend the time for acceptance of bids (See Chapter 5 for more information on time extensions of bids.) If the bidder whose bid is being verified does not grant an extension of time, the bid shall be considered as originally submitted.

Remember that the purpose of the request for verification is to ensure that the bidder will be put on notice that the CO suspects a mistake has been made. However, when requesting verification you should never present to the bidder any suggested interpretation or a rewrite of the part of the bid in question.

6.1.3 Correct Clerical Mistakes in the Bid

FAR 14.406-2(b)

If the mistake is of a clerical nature, and the mistake is apparent on the face of the bid, it may be corrected by the CO before award. Before correcting the mistake, first obtain from the bidder a written verification of the intended bid. Correct bid by attaching the verification to the original bid and a copy of the verification to the duplicate bid. Correction shall not be made on the face of the bid; however, it shall be reflected in the award document.

6.1.4 Respond To Allegations If Bidder Alleges A Non-Clerical Mistake

After the bid opening, but before award, a bidder might allege that a mistake has been made. This may result from your call to verify the bid. Alternatively, the bidder may call you to report a mistake with no prompting on your part. These may or may not have been apparent to the CO upon examination of the bids.

You cannot accept an oral allegation of a mistake. If one is received, advise the bidder that the allegation must be in writing and identify the kinds of supporting information that are needed (see Exhibit 6-6).

INSTRUCTIONS FOR BIDDERS WHO ALLEGE MISTAKES

- Allege mistake(s) in writing
- Request withdrawal or correction of the bid
- Submit any necessary evidence of the mistake, for example:
 - Certified copies of worksheets and other data used in preparing the bid
 - Copies of subcontractor and supplier quotes
 - Published price lists
 - Comparison of line items
 - Any other data necessary to support the allegation

Exhibit 6-6. Instructions for Bidders Who Allege Mistakes.

6.1.5 Verify the Alleged Mistake

After the bidder has alleged a mistake in writing and provided the requested information, you must determine whether there has in fact been a mistake. Gather all the evidence and obtain any necessary reviews from technical personnel and/or the legal office.

6.1.6 Recommend Correcting the Mistake or Allowing Withdrawal of the Bid

If an error is detected in the bid, two actions may be taken:

- correct the mistake or
- allowing the bidder to withdraw the bid.

MISTAKES IN BIDS

6.1.6.1 When To Recommend Correcting Non-Clerical Mistakes

FAR 14.406-3

The FAR at 14.406-3(a) and (b) permits correction of non-clerical mistakes under the following conditions:

“If a bidder requests permission to correct a mistake and clear and convincing evidence establishes both the existence of the mistake and the bid actually intended, the agency head may make a determination permitting the bidder to correct the mistake; provided that if the correction would result in displacing one or more lower bids, such a determination shall not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and the bid itself.”

This means that the evidence submitted by the bidder will have little effect on supporting an alleged mistake except to the extent that it directly substantiates what appears in the IFB and the bid. If the evidence is not adequate to support this conclusion, a decision may be made to keep the bid as originally submitted, thus permitting neither withdrawal nor correction of the bid.

“(b) If a bidder requests permission to withdraw a bid rather than correct it, the evidence is clear and convincing both as to the existence of a mistake and as to the bid actually intended, and the bid, both as uncorrected and as corrected, is the lowest received; the agency head may make a determination to correct the bid and not permit its withdrawal.”

In this instance, the bidder has convinced the agency that a mistake was made and what the bid should have been. Even though the bidder asks only to withdraw the bid, the agency can certainly decide to take advantage of a correct, intended low bid (make it a firm bid). However, if evidence is not adequate to support a determination, a decision may be made to keep the bid as originally submitted, permitting neither withdrawal nor correction of the bid.

The correction of mistakes (other than clerical mistakes apparent on the face of the bid) is a matter that you must very carefully consider. Remember the firm bid rule!

FAR 14.406-3

“A bid is firm from the time of opening until the date the bid expires.”

Also remember the rule relative to responsiveness!

“A bid that is not responsive at the time of bid opening cannot later be made responsive.”

Add to those two rules, the concern for the integrity of the sealed bidding method of contracting and the desire never to give any one bidder a competitive advantage over another bidder. Clearly, any corrective action taken or permitted must be accomplished only as indicated at FAR 14.406-3 and in accordance with agency procedures. The importance of this concern is highlighted when you consider that correcting mistakes might result in any of the following:

- No change to the price bid.
- Increase in the bid price.
- Reduction in the price bid.

Any of the above changes, except the first, could change the bid in line for award.

If correcting the bid changes the relative standing of bidders, it should be allowed only when evidence can be obtained substantially from the bid document itself, without referring to the other documents the bidder may have (e.g., worksheets, catalog prices, vendor quotes, etc.). Because of this constraint, such corrections are generally limited to errors of a clerical nature.

**6.1.6.2 When To
Recommend
Permitting
Withdrawal of the Bid**

14.406-3(c)

The FAR at 14.406-3(c) permits withdrawal of the bid under the following conditions:

“If, under paragraph (a) or (b), the evidence of a mistake is clear and convincing only as to the mistake but not as to the intended bid; or the evidence reasonably supports the existence of a mistake but is not clear and convincing, the agency head, or an official above the CO, unless otherwise provided by agency procedures, may make a determination permitting the bidder to withdraw the bid.”

MISTAKES IN BIDS

In this situation, there is not clear and convincing evidence both as to the mistake and the bid intended. That being the case, the bidder may be permitted to withdraw its bid. However, if evidence is not adequate to support a determination, a decision may be made to permit neither withdrawal nor correction of the bid.

6.1.6.3 Preparing the Recommendation

If the CO decides to recommend correction of a non-clerical mistake or withdrawal of the bid, the following should be forwarded to the agency head or designee:

- Signed copy of the bid involved.
- Copy of the solicitation and any specifications or drawings.
- Abstract of the bids received.
- Written request of the bidder to withdraw or modify the bid and any supporting evidence, as applicable.
- Written statement by the CO stating the following:
 - Description of the supplies or services
 - Expiration date of the bid
 - Specific information relating to the alleged mistake
 - Summary of the evidence submitted by the bidder
 - In the event of only one bid, a quotation of the most recent price and/or an estimate of a fair and reasonable price
 - Any additional pertinent evidence
 - Recommendation to either accept the bid as submitted, or to permit withdrawal or modification of the bid.

Let's take a break here to answer those questions on the first page of this chapter.

“Did the CO handle the bid correction procedure correctly?”

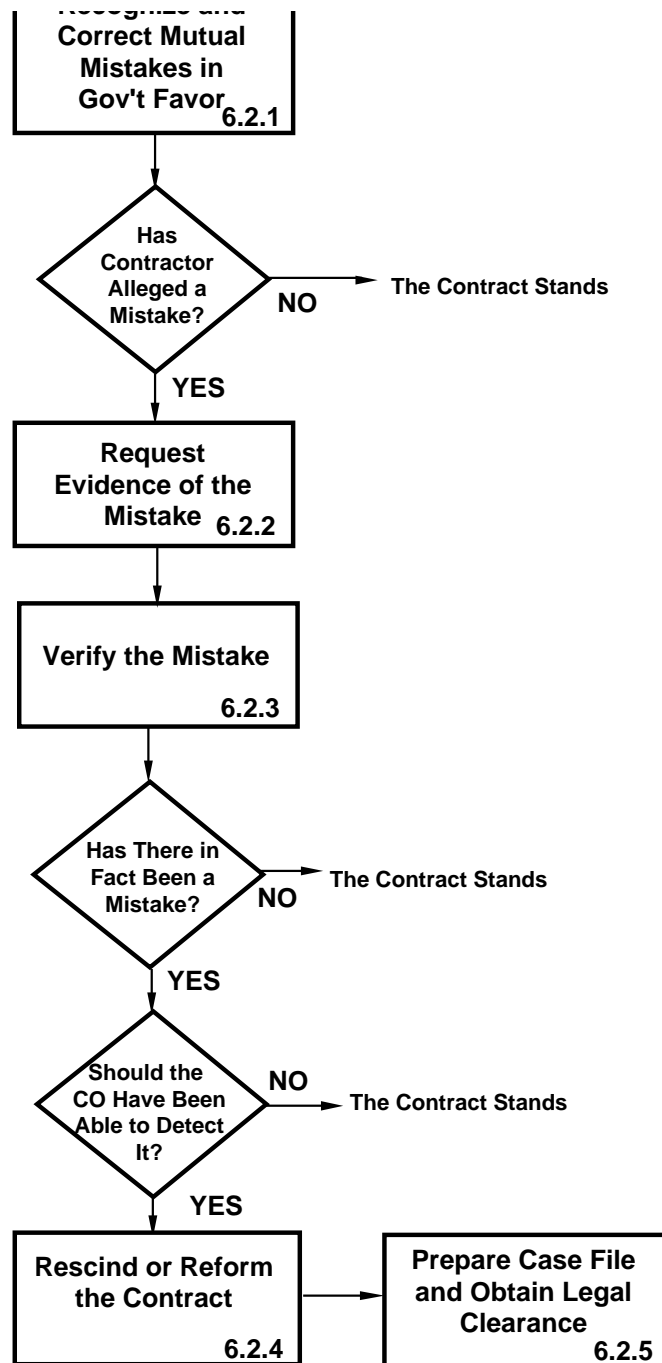
FAR 14.406-1 states that, in cases of apparent mistakes, if the CO has reason to believe a mistake has been made, he/she may ask the bidder to verify his/her bid. The CO allowed the bidder to correct the bid. However, this applies only to clerical mistakes apparent on the face of the bid. The mistake in bid that occurred is covered by FAR 14.406-3, and this requires the CO to refer the case to the agency head or delegatee for review and authority to correct the bid. Thus, the CO did not handle the bid correctly.

The second situation (“The bidder cannot provide the worksheets to prove a mistake was made.”) creates more problems because clear and convincing evidence is not available. If there is no evidence to establish that a mistake was made, the agency head may not permit the bid to be corrected or withdrawn.

In the third situation, Acme's price (\$177,853) was much lower than the other bidders! This makes it easier for the CO to suspect that a mistake has been made. However, even in this case, the CO would not have authority to correct the bid without referring it to the agency head.

In the fourth situation (Could Acme withdraw its bid at this time?), Acme can request permission to withdraw its bid. The agency head (or delegatee) will review the documentation that Acme submits and will determine whether or not the evidence is clear and convincing, both as to the existence of a mistake and the bid intended.

MISTAKES IN BIDS



6.2 POSTAWARD MISTAKES IN BIDS

This section of the text pertains to mistakes in bids that are not discovered or alleged until after the contract is awarded; and then, only to the bid of the successful bidder.

The situation is now much different from mistakes discovered or alleged before award. Now that a contract has been signed, the corrective action is governed both by FAR 14.406-4 (Mistakes After Award) and FAR 33.2 (Disputes and Appeals).

By carefully following the guidance pertaining to preaward mistakes (e.g., apparent clerical mistakes or when the CO suspects a mistake), you will prevent most postaward claims. Even so, there are instances in which a mistake is not discovered or alleged until after award.

6.2.1 Recognize and Correct Mutual Mistakes That Are in the Government's Favor

If mistakes are clerical in nature, are evident on the face of the bid, and do not go to the substance of the award decision, you may correct these by a unilateral or administrative contract change or by a bilateral modification. Support any such change with a simple findings of facts justifying the change.

When a mistake in the (contractor's) bid is not discovered until after award, it may be corrected by a contract modification if:

- Correction is favorable to the Government, and
- Essential requirements of the specifications are not changed.

You are not likely to receive a request to correct a mistake that would lower a price on a contract that has already been awarded. However, you might receive a request to correct a mistake relating to a specification. For example, the specification in an IFB requires that widgets be packed 24 per carton, loose pack. The bidder showed that it would furnish its standard 24 per carton of widgets. Later, the contractor discovers that its widgets are individually wrapped and alleges a mistake including a request to waive the loose pack requirement. Your agency decides that the individually wrapped widgets offer better storage protection than the loose pack. Modify the contract to revise the specification so that you (and the inspector) can accept their packaging.

6.2.2 Request

MISTAKES IN BIDS

Evidence of the Mistake

If a mistake is alleged or disclosed after award of the contract, the CO shall request the contractor to support the alleged mistake by submitting written statements and pertinent evidence. Exhibit 6-8 lists some examples of the types of evidence that may be needed, but recognize that the kinds and amounts of evidence required will depend on the nature and scope of the alleged mistake.

EXAMPLES OF EVIDENCE NEEDED FOR PROCESSING ALLEGED MISTAKES

- Contractor's file copy of the bid
- Contractor's original worksheets
- Subcontractor's and supplier's quotations
- Published price lists
- Other evidence as applicable

Exhibit 6-8. Examples of Evidence Needed for Processing Alleged Mistakes.

6.2.3 Verify the Mistake

The CO will review the evidence submitted by the contractor to determine whether such evidence is clear and convincing and that a mistake in bid was made. After review of the evidence, the CO shall prepare a statement to be included with other material in the case file; the statement shall include the following:

- His or her opinion whether a bona fide mistake was made.
- His or her opinion whether the CO was, or should have been, on constructive notice of the mistake before the award.
- Reasons supporting of such opinions.

6.2.4.1 Rescind the Contract

If the alleged mistake is supported by clear and convincing evidence (Exhibit 6-8, above), and correction is not favorable to the Government, the contract may be rescinded (i.e., voided). However, to rescind the contract:

- The evidence must be clear and convincing, and
- The mistake was mutual, or
- If unilaterally made by the contractor, it is so apparent that the CO should have been aware that a mistake probably existed.

As an example of a mutual mistake, suppose the Government furnished a specification within the IFB that was incorrect or misnumbered. Later, in trying to utilize the specification, the contractor found the error. Using the correct specification would be a substantive change. This is a mutual mistake and the contract may be rescinded. Or, suppose the contractor confused an old specification with a new, more-stringent specification. Working to the old specification is less costly and the bid price was substantially low. The contractor failed to notice the difference and the CO did not catch the fact that the low prices might reflect a misunderstanding of the work. The contract may be rescinded.

Rescission of a contract differs from a termination (for convenience or for default). A termination action is accomplished under the appropriate termination clause in the contract. The contractor is entitled to rescission under Federal contract law when a mistake has been proven. The contract is voided, the funds deobligated, and the file documented accordingly.

6.2.4.2 Reform the Contract

Rather than rescind the whole contract, the agency may choose to reform it either to:

- Delete the items involved in the mistake, or
- Increase the price if the price as corrected, does not exceed that of the next lowest acceptable bid under the original IFB.

In this situation, all evidence must be clear and convincing that a mistake in bid was made.

MISTAKES IN BIDS

Reforming action could include, for example:

- Item XX was based on an incorrect specification used in the example for rescinding a contract. Delete item XX and retain the other items.
- Adjust the total contract price, or the price for any item(s), if the mistake pertains to pricing.

Reformation of a contract differs from modification of a contract. A modification reflects changes in terms and conditions of the contract that are agreed to by both parties and, unless properly justified, are within the scope of the original contract. A reformation might alter the scope of the contract and the change is something the contractor is or would be entitled to by operation of Federal contract law. For example, having proven the mistake, the contractor is allowed to have the contract reformed to reflect the agreement intended. As a practical matter, the contract is changed by a modification that shows it to be, in fact, a reformation.

Even though a mistake is alleged, if the evidence does not support one of the two actions given above, no change shall be made in the contract.

For all cases, proposed actions shall be coordinated with legal counsel in accordance with agency procedures.

6.2.5 Prepare Case File and Obtain Legal Clearance

In documenting the case file, you will include the information shown in Exhibit 6-9:

DOCUMENTS TO INCLUDE IN THE CASE FILE

FAR 14.406-4

- All evidence furnished by the contractor
- A signed statement by the CO that includes:
 - Description of supplies or services involved
 - Time that the alleged mistake was disclosed
 - How the mistake was disclosed
 - Summary of the contractor's evidence
 - Summary of any other pertinent evidence
 - In cases where only one bid was received
 - Most recent contract price
 - CO's estimate of a fair and reasonable price
 - Basis for the estimate
 - CO's opinion and data supporting this opinion, including answers to:
 - Is it a bona fide mistake?
 - Should the Government have been aware of the mistake?
 - Recommended proper action
 - Other recommended acquisition plans
 - Status of payments and performance to date
 - Signed copy of the bid involved
 - Copy of the solicitation
 - Relevant specifications or drawings
 - An abstract of the bids received
 - Contractor's request to reform or rescind
 - Copies of all relevant correspondence
 - Copy of the contract and any changes or supplemental agreements

Exhibit 6-9. Documents to Include in the Case File.

CHAPTER 7

RESPONSIBILITY

THE CASE OF THE COMPLEX RADIOS

You, a contract specialist, are processing the results of an IFB issued for 100 commercial-type radios. Five bids were received. The low bid is from a small business concern (Ace Electronics) that has never manufactured a complex electronic unit like the one specified in the IFB. You are trying to determine who should be awarded the contract. You have already determined that adequate price competition has been obtained and that the low bid is a fair and reasonable price. However, you are concerned that Ace Electronics will not be able to manufacture the item on time and in accordance with the specifications.

What should you do?

This chapter will explain how you determine whether a prospective contractor is a responsible bidder.

RESPONSIBILITY

LEARNING OBJECTIVES

At the completion of this course, you will be able to:

Overall: Determine and document the responsibility or nonresponsibility of a prospective contractor.

Individual:

1. Review the Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs to determine that the contractor (either by corporate name or names of principal officers) is not debarred, suspended, or otherwise ineligible for the contract.
2. Identify data that bear on the issue of responsibility.
3. Apply General and Special Standards for responsibility to assembled data.
4. Determine whether to request a preaward survey.
 - Prepare and forward request for preaward survey.
 - Review finished survey report to identify any omissions or deficiencies and follow-up questions for survey team members.
5. Determine the responsibility/nonresponsibility of small business concerns.
6. Obtaining preaward EEO clearance from the Department of Labor for contracts and subcontracts of \$1 million or more.

Exhibit 7-1. Learning Objectives.

CHAPTER INTRODUCTION

Government Policy On Responsibility

FAR 9.103 & 105-2

It is the policy of the Government that purchases shall be made from, and contracts awarded to, responsible prospective contractors only. Therefore, no purchase or award shall be made unless the CO makes an affirmative determination of the responsibility of the prospective contractor. If the determination is that the prospective contractor is responsible, the CO's signature on the contract constitutes the determination. If, however, an award is not made because the prospective contractor was found to be nonresponsible, the CO shall document the file with the reasons for the determination of nonresponsibility.

Responsibility Defined

FAR 9.104

To be considered responsible, a prospective contractor must:

- Be eligible to receive the award, **and**
- Have a satisfactory performance record, **and**
- Be able to perform the work/services required by the contract, **and**
- Be available to perform, **and**
- Have integrity, **and**
- Have adequate financial resources, **and**
- Meet any special standards.

Why Determine Re- sponsibility?

FAR 9.103(c)

"The award of a contract to a supplier based on lowest evaluated price alone can be false economy if there is subsequent default, late deliveries, or other unsatisfactory performance resulting in additional contractual or administrative costs. While it is important that Government purchases be made at the lowest price, this does not require an award to a supplier solely because that supplier submits the lowest offer. A prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors."

Steps In Determining Responsibility

The steps in determining responsibility are charted on the next page. After the flowchart, each step is discussed in turn.

RESPONSIBILITY

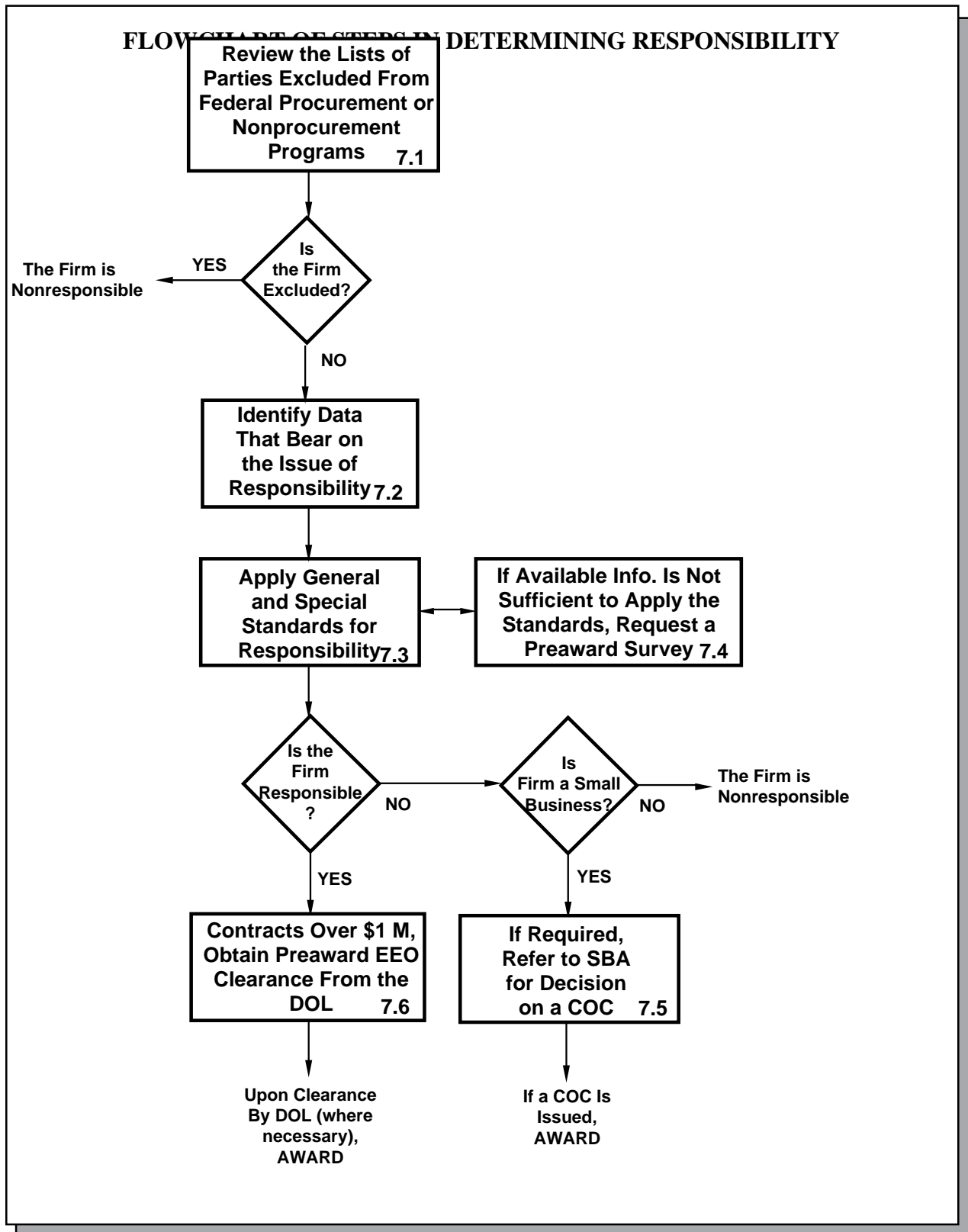


Exhibit 7-2. Flowchart of Steps.

STEPS IN DETERMINING RESPONSIBILITY

7.1 REVIEW LISTS OF EXCLUDED PARTIES

As a part of your responsibility determination, you must refer to the “list.” The “list” is the Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs. These lists are compiled, maintained, and distributed by the General Services Administration. Agencies shall not, unless the acquiring agency’s head or a designee determines that there is a compelling reason to do so:

- Solicit offers from,
- Award contracts to, or
- Consent to subcontracts with prospective contractors on these lists.

Even though a bidder has been identified on the “list” include the firm on the abstract of bids. Excluded parties are also precluded from conducting business with the Government as agents or representatives of other contractors. Contractors cannot enter into any subcontract with a party that has been excluded. Exhibit 7-3 lists several causes for exclusion.

RESPONSIBILITY

| <div>CAUSES FOR EXCLUSION</div> <div>FAR 9.406-2 for debarment & FAR 9.407-2 for suspension</div> | |
|---|---|
| <ul style="list-style-type: none">• Conviction of, or civil judgment for:<ul style="list-style-type: none">- Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract.- Violation of Federal or State antitrust statutes relating to the submission of bids.- Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.- Erroneously affixing a Made in America label- Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor. | <ul style="list-style-type: none">• Preponderance of evidence supports:<ul style="list-style-type: none">- Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as:<ul style="list-style-type: none">--Willful failure to perform in accordance with the terms of one or more contracts.--A history of failure to perform or of unsatisfactory performance of, one or more contracts.- Violation of the Drug-Free Work Place Act of 1988.- Any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor. |

Exhibit 7-3. Causes for Exclusion.

Review the Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs to ensure that the prospective contractor has not been excluded from competing for your IFB and again just prior to award. However, an excluded party may submit a bid under a new corporate title. You can detect and exclude these parties through such means as comparing the names of the corporate officers of the bidder against names of the corporate officers of parties on the Excluded Lists. GSA has automated the Excluded List and included the facility to search on such things as the names of corporate officers (see GSA's User's Manual to the Lists of Parties Excluded From Federal Procurement Or Nonprocurement Programs).

In addition, review the list to ensure that no proposed subcontractor, for any subcontract subject to Government consent, has been excluded. The contractor is responsible for notifying the contracting officer if a first-tier subcontractor has disclosed it has been excluded before entering into the subcontract. If a subcontractor is on the list, notify the bidder in writing and ask him/her to obtain a different, more acceptable subcontractor to be eligible for award. This situation might occur in construction contracts where the bidder often indicates who the subcontractor will be. In most supply and service contracts awarded using sealed bidding procedures, subcontractors are not identified when bids are submitted.

FAR 9.405-1

"Notwithstanding that a prospective contractor may be on these lists, agencies may continue contracts or subcontracts in existence at the time the prospective contractor was found to be on these lists, unless the acquiring agency's head or a designee directs otherwise."

If there are compelling reasons for renewing or extending current contracts with an excluded contractor, state such reasons in a justification proposed for signature by the agency head or a designee.

7.2 IDENTIFY DATA THAT BEAR ON RESPONSIBILITY

7.2.1 The Necessity For Adequate Data

FAR 9.103(b) states, that, "... in the absence of information clearly indicating that the prospective contractor is responsible, the CO shall make a determination of nonresponsibility." At 9.105-1, the FAR further states that, before a CO may make a determination on responsibility, the CO must "... possess or obtain information sufficient to be satisfied that a prospective contractor currently meets the applicable standards in 9.104."

Before you apply the general and special standards of responsibility (Section 7.3.2), you will seek data, starting with that which is readily available in your agency. Also, if the firm you wish to award to has other agency contracts, check to see whether they are having delivery problems on their current contracts.

7.2.2 Sources of Data

Several sources of information are available to support determinations of responsibility or nonresponsibility as follows:

RESPONSIBILITY

SOURCES OF INFORMATION TO DETERMINE RESPONSIBILITY

- The prospective contractor — including bid information, questionnaire replies, certifications and representations, financial data, information on production equipment, and personnel information.
- Records and experience data — from contracting office, audit offices, contract administration offices, and other contracting offices.
- Other sources such as:
 - Publications
 - Suppliers
 - Subcontractors
 - Customers of the prospective contractor
 - Financial institutions
 - Government agencies
 - Business and trade associations

Exhibit 7-4. Sources of Information to Determine Responsibility.

7.3 DETERMINE RESPONSIBILITY

Responsibility is assessed after you have obtained bids from a number of bidders, completed your analysis of which firm should get the contract, and selected the low bidder, checked the "List," and gathered data bearing on responsibility.

The process for determining responsibility may vary depending on, for example, procedures in your office or the number of bids received. However, generally, the more efficient process is to first determine whether or not the bidder is “otherwise qualified and eligible” to receive further consideration. If the bidder is qualified and eligible, then you

may proceed with the other standards of responsibility (outlined in Section 7.3.2). The reason for considering this standard first is that, normally, this standard can be determined by referring to the bidder's certification or representation.

7.3.1 Qualified And Eligible Bidders

There are several matters to consider when determining whether or not the bidder is "otherwise qualified and eligible to receive an award under applicable laws and regulations." There will be several items that relate to qualifications and eligibility in any given proposed contract action. One way for you to identify those that apply to your action is to review Section K of the IFB (Representations, Certifications, and Other Statements of Bidders). The ones that you will most often deal with are discussed below:

- The Walsh-Healey Public Contracts Act (see Section 7.3.1.1 of this text for more information).
- Set-Aside or Partial Set-Aside for Small Business. If this action is a set-aside or partial set-aside for small business, did the bidder certify that it is a small business? You are authorized to rely on the bidder's certification, however, if you believe the certification is erroneous or if the size status is protested by another bidder, you must take the matter to SBA (See Section 9.2 in Chapter 9).
- Subcontracting Plan Submission (See Section 8.2 in Chapter 8).

FAR 19.302

FAR 19.705-4(b)

Other examples of certifications and representations related to eligibility under Section K of the IFB include:

- Certification of Nonsegregated Facilities (FAR 52.222-21)
- Previous Contracts and Compliance Reports (FAR 52.222-22)
- Affirmative Action Compliance (FAR 52.222-25)
- Clean Air and Water Certification (FAR 52.223-1)
- Certification Regarding a Drug-Free Workplace (FAR 52.223-5)
- Certificate of Procurement Integrity (FAR 52.203-8)

RESPONSIBILITY

7.3.1.1 Walsh-Healey Public Contracts Act

All contracts for furnishing materials, supplies, articles, and equipment and with a value of greater than \$10,000 are subject to the Walsh-Healey Public Contracts Act (the Act) (41 U.S.C. 35-45). This Act states that all such contracts shall:

- Be with manufacturers or regular dealers in the supplies manufactured or used in performing the contract; and
- Include or incorporate by reference the representation that the contractor is a manufacturer or a regular dealer of the supplies offered, and the stipulations required by the Act pertaining to such matter as minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions.

FAR 22.602

QUALIFYING AS A MANUFACTURER UNDER THE WALSH-HEALEY ACT

FAR 22.606-1

A bidder qualifies as a manufacturer if:

- He/She shows before award that it is an established manufacturer of the particular supplies of the general character sought by the Government, and
- He/She has plant, equipment, and personnel to manufacture on the premises the items called for under the contract; or
- He/She is newly entering into a manufacturing activity, and has made all necessary arrangements and commitments for space, equipment, and personnel.

Exhibit 7-5. Qualifying as a Manufacturer Under the Walsh- Healey Act.

A bidder qualifies as a regular dealer under the criteria set forth in the Act if it shows before award that it is a regular dealer dealing in the particular supplies of the kind offered to the Government, as follows:

**QUALIFYING AS A REGULAR DEALER UNDER
THE WALSH-HEALEY ACT****FAR 22.606-2**

A bidder qualifies as a regular dealer if:

- He/She has an establishment, or a leased or assigned space, in which it regularly maintains a stock of supplies in which it claims to be a dealer.
- The stock maintained is a true inventory from which sales are made.
- The supplies stocked are of the same general character as those to be supplied under the contract.
- Sales are made regularly from stock on a recurring basis, are not only occasional, or constitute an exception to the usual operations of the business.
- Sales are made regularly in the usual course of business to the public (i.e., to purchasers other than Federal, State, or Local Government agencies).
- The business is an established and going concern. It is not sufficient to show that arrangements have been made to setup such a business.

Exhibit 7-6. Qualifying as a Regular Dealer Under the Walsh- Healey Act.

A properly prepared IFB will contain a representation to be completed by the bidder to state whether it is or is not a manufacturer or regular dealer. A bidder who is not a manufacturer or regular dealer is ineligible for award. However, even though a bidder indicates he/she is a manufacturer or regular dealer, in the following circumstances, the CO should investigate and determine the eligibility of the bidder:

RESPONSIBILITY

MANUFACTURER OR REGULAR DEALER?

FAR 22.608-2(b)

Investigate and determine the eligibility of the bidder in the following circumstances:

- You have knowledge that raises the question of the validity of the representation.
- A protest has been lodged. (See Chapter 9 of this text.)
- The bidder that is in line for contract award has not previously been awarded a contract subject to the Walsh-Healey Act by the individual acquisition office.
- Based on information received from preaward survey findings.

Exhibit 7-7. Manufacturer or Regular Dealer?
[VG 7-11]

FAR 22.608-2(f)

Because most contractors deal on a repetitive basis with their customer agencies, the question of whether a bidder is a regular dealer or manufacturer is not a recurring problem.

FAR 22.604

The CO shall make a determination as to whether the low bidder is eligible to receive the award as a regular dealer or a manufacturer. If the CO determines that the firm is not eligible, the low bidder is deemed non-responsible and will not receive the award. The bidder may appeal that determination, and the CO is required to forward the appeal to the Department of Labor, or if the low bidder is a small business, the CO must forward the appeal to SBA.

Be aware that there are exceptions to the Act, both:

- Statutory (i.e., public urgency or perishable products), and
- Regulatory (i.e., public utility services, periodicals, or supplies manufactured outside the United States).

In the vignette at the beginning of this chapter, there is no Walsh-Healey Act problem. Ace Electronics has manufactured radios for the commercial market. However the radios are less complex in design than the IFB's specifications. The question you, as a contract specialist, are concerned with, is whether the manufacturer can produce the more complex radio specified in the IFB. Additional information will continue to be provided on this case later in this chapter.

7.3.2 Applying Other General Standards

After determining that the low bidder is qualified and eligible to receive the award, consider the remaining General Standards and then if applicable, Special Standards (see Section 7.3.3 for Special Standards) of responsibility. This is the point at which you and the CO collect information and make what might be called value judgments as to whether or not the bidder is responsible. If information is not readily available, you may request that a preaward survey be conducted (see Section 7.4). Exhibit 7-8 lists all the General Standards; a more detailed discussion follows.

GENERAL STANDARDS FOR RESPONSIBILITY

FAR 9.104-1

A prospective contractor is responsible if it:

- Is otherwise qualified and eligible to receive an award under applicable laws and regulations (e.g., is not debarred, suspended (Section 7.1), or ineligible (Section 7.3.1) and is a regular dealer or manufacturer (Section 7.3.2.1).
- Has a satisfactory record of performance. (Section 7.3.2.1)
- Has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them. (Section 7.3.2.2)
- Has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them. (Section 7.3.2.2)
- Has adequate financial resources to perform the contract, or the ability to obtain them. (Section 7.3.2.3)
- Is able to comply with the required delivery schedule. (Section 7.3.2.4)
- Has a satisfactory record of integrity and business ethics. (Section 7.3.2.5)

Exhibit 7-8. General Standards for Responsibility.

RESPONSIBILITY

Except for small business, determining responsibility is left primarily to the CO and is not questioned by the Comptroller General (GAO) or the courts unless there is evidence of bad faith or the lack of a reasonable basis for the decision.

If a CO makes a decision that a prospective small business contractor is not responsible, the Small Business Administration (SBA) is authorized to certify the competency of the firm (more on this subject in Section 7.5).

7.3.2.1 Past Performance

A prospective contractor that is or recently has been seriously deficient in contract performance shall be presumed to be nonresponsible, unless the CO determines that the circumstances were beyond the contractor's control or that the contractor has taken appropriate corrective action. Past failure to apply sufficient tenacity and perseverance to perform acceptably is strong evidence of nonresponsibility. The CO shall consider the number of contracts involved and the extent of the deficiency of each in making this evaluation.

The fact that a firm has just satisfactorily completed a contract, is not sufficient evidence for you to determine that the firm is responsible. The overall record of prior performance for that firm is what must indicate whether the firm is responsible or nonresponsible. However, poor prior performance on earlier, smaller contracts should not be used to judge whether a firm is nonresponsible when that firm has performed satisfactorily on much larger contracts for the same work.

A poor record of past performance is a strong indicator of nonresponsibility, absent evidence to the contrary. An example of poor performance is that of the prospective contractor who has not been able to meet delivery schedules on its present Government contracts. Another would be failure to meet the goals contained in a subcontracting plan. A bidder may be found responsible despite a poor performance record.

Sometimes it may be necessary to look into the performance record of parent or predecessor companies, which will be discussed next.

Performance of Parent or Predecessor Companies

Where there is a reasonable connection, the poor performance of a parent company or an affiliate may be taken into account in determining the responsibility of a wholly owned bidder-subsidary. This is true even in the absence of a close working relationship between the two companies

and even though the two firms share only a few managerial positions in common. Similarly, the record of a bankrupt predecessor firm may be considered in determining the responsibility of the current bidder where the management and control of both firms are the same and the poor record continued after the current firm took over operations.

7.3.2.2 Capability to Perform

The prospective contractor must possess the necessary organization, experience, accounting and operational controls, and technical skills and the necessary production, construction, and technical equipment to ensure quality and safety measures and facilities, or demonstrate the ability to obtain them.

If the prospective contractor has to obtain any of them and has not made acceptable subcontracting arrangements, then you shall require acceptable evidence of the prospective contractor's ability to obtain the resources. Acceptable evidence normally consists of a commitment or explicit arrangement, that will be in existence at the time of contract award, to rent, purchase, or otherwise acquire the needed facilities, equipment, or other resources.

7.3.2.3 Financial Ability

FAR 32.107

The prospective contractor must have adequate financial resources to perform the contract, or the ability to obtain them. The following paragraph on "Buy-In" Bids is an example of how a prospective contractor's financial ability may be assessed.

"Buy-In" Bids

FAR 3.501

A bid may not be automatically rejected simply because it is unprofitable or may even result in a loss. The submission of such a bid (sometimes referred to as a "buy-in") may reflect on the bidder's understanding of the Government's requirement and its responsibility. The key is whether or not the CO has reason to believe that the bidder has the requisite financial ability to perform the contract at a loss. If a bidder is found to have this ability, it will be deemed responsible (if it meets the other standards). A preaward protest will not be successful when filed solely on the basis that the apparently successful bidder will suffer a loss in performing the contract. If found not to have the ability, the bidder will be declared nonresponsible.

RESPONSIBILITY

7.3.2.4 Available to Perform

The prospective contractor must be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.

The key question the CO must ask is, “Does the prospective contractor possess the adequate resources to bear on the Government’s requirements given other commitments?”

An example of where the Comptroller General upheld a CO’s determination of nonresponsibility based on an inability to comply with required delivery schedules, is in a case involving the X-Tyal International Corporation. This firm had recently moved to a new facility, had undergone a labor strike, and had delivery problems with a majority of its other Government contracts. Given that amount of evidence the CO was correct in the nonresponsibility determination.

7.3.2.5 Contractor Integrity

The prospective contractor must have a satisfactory record of integrity and business ethics.

This is probably the most difficult standard to apply when determining responsibility because the definition for integrity is very vague. However, generally, integrity is defined as honesty, decency, and uprightness. Most cases involving a nonresponsibility determination based on a lack of integrity involve a criminal violation by the company or its employees.

An example of where the Comptroller General upheld a CO’s determination of nonresponsibility based on a lack of integrity involved the Mayfair Corporation Company. This firm alleged a false certification submitted under requirements of prior Government contracts.

7.3.3 Applying Special Standards

For some acquisitions, it may be appropriate to use special standards, in addition to the general standards to determine a prospective contractor’s responsibility. When special standards are used, they must be stated in the IFB. Special standards of responsibility may be appropriate when:

- Experience has proven it necessary for a particular acquisition or a class of acquisitions.
- Unusual expertise or specialized facilities are needed for adequate contract performance.

Specialized experience requirements shall not be used unless:

- The CO is willing to abide by them after the results of the bidding have been seen; and
- The requirements reasonably relate to the bidder's responsibility and are not unduly restrictive.

For example, an IFB may require (as a prerequisite to award) that the bidder have certain specialized experience. For example, a bidder may be required to show that:

- It has had a minimum number of years of experience in manufacturing a particular type of item; or
- It has previously performed similar work.

This illustration pertains to experience and expertise. Similarly, special standards may be appropriate relative to facilities. The acquisition of food stuffs provides a good example. Prospective contractors' facilities must be adequate to meet approval under the agency's standards for sanitation. Meeting sanitation standards is a FAR requirement for bidders supplying food stuffs.

New firms are not necessarily barred from competing on this type of IFB, since the experience of the firm's principal officers may be considered. Also, unless prohibited by the terms of the IFB, a specialized experience requirement may be met through a subcontractor.

7.3.4 Determining Subcontractor Responsibility

| |
|-------------|
| FAR 9.104-4 |
|-------------|

Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors (but see Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs regarding ineligible firms). However a prospective subcontractor's responsibility may affect the Government's determination of the prospective prime contractor's responsibility. A prospective contractor may be required to provide written evidence of a proposed subcontractor's responsibility.

When it is in the Government's interest to do so, the CO may directly determine a prospective subcontractor's responsibility (e.g., when the prospective contract involves medical supplies, urgent requirements, or substantial subcontracting). In this case, the same standards used to determine a prime contractor's responsibility shall be used by the Government to determine a subcontractor's responsibility.

RESPONSIBILITY

7.4 REQUEST A PREAWARD SURVEY

A preaward survey is defined as an evaluation by a surveying activity of a prospective contractor's capability to perform a proposed contract. The conditions under which a preaward survey is generally appropriate are:

| | |
|--|---|
| When needed: | <ul style="list-style-type: none">• The information on hand or readily available to the CO is not sufficient to determine the prospective contractor's responsibility.• Poor past performance experience with contractor.• Reference to SBA for Certificate of Competency (COC) as small business is likely.• Committee for the Blind and Severely Handicapped requests assistance in accessing the capabilities of a workshop for mandatory supplies and services |
| Dollar value: | <p>Unless circumstances justify its cost, the CO should not request a preaward survey if the contract will be for:</p> <ul style="list-style-type: none">• \$25,000 or less, or• A fixed price of less than \$100,000 involving commercial products only. |
| Level of detail required: | Commensurate with dollar value and complexity of the acquisition. |
| Should it include subcontractors? | Normally this is the prime contractor's responsibility. However, for an important contract involving extensive subcontracts, subcontractors may be included. |

7.4.1 Preparing a Request for Preaward Survey

The CO should use the SF 1403, Preaward Survey of Prospective Contractor (General), to request the surveying activity to perform the preaward survey. Generally, the surveying activity is the cognizant contract administration office.

PREAWARD SURVEY REQUEST**FAR 9.106-2**

The preaward survey request shall:

- Identify factors, in addition to those on the SF 1403, about which additional information is needed (see Exhibit 7-11).
- Include the complete solicitation package (unless it has previously been furnished).
- Indicate any known prior unsatisfactory performance by the prospective contractor.
- State whether the contracting office will participate in the survey.
- Specify a due date for the report. This date should be consistent with the scope of the survey requested. Normally allow at least 7 working days to conduct the survey.
- Limit the scope of the survey, when appropriate.

Exhibit 7-9. Preaward Survey Request.

RESPONSIBILITY

ILLUSTRATION OF THE USE OF THE PREAWARD SURVEY

In the vignette discussed earlier in this chapter, you are concerned about whether Ace Electronics is responsible. Can it manufacture a complex radio? After you have reviewed all data in-house and other informational sources, such as audit and contract administration, you may still be uncertain as to what your determination of responsibility should be. In this case, the Government estimate for the price of the 100 radios is \$500,000. Hence, you have justification to ask for a preaward survey if you feel it is necessary. In your preaward survey request, state which factors require additional information. You might therefore list the following questions on the preaward request form and ask the surveying activity to furnish the answers:

- *Has Ace Electronics ever manufactured radios of similar complexity? (Check and annotate Block 19A on the SF 1403).*
- *Does Ace have an adequate quality assurance program to produce electronics equipment of high reliability so that the specifications will be met? (Check and annotate Block 19C on the SF 1403).*
- *Does Ace have qualified engineers on board, or consultants available to deal with reliability problems? (Check and annotate Block 19C on the SF 1403).*
- *Does Ace have adequate financing? If it incurs a loss on this contract, will it be able to continue performance? (Check and annotate Block 19D on the SF 1403).*
- *Is Ace capable of completing this radio contract (performing on time to the desired specifications without compromising its other commitments)? (Check and annotate Block 19G on the SF 1403).*
- *Has Ace had problems in the past with quality, delivery, or production ? (Check and annotate Block 19G on the SF 1403).*

7.4.2 Standard Form 1403 (Preaward Survey)

The CO initiates the SF 1403 by completing applicable parts of the form as shown in Exhibit 7-10 and 7-11. The surveying activity, after accomplishing the survey, will complete the SF 1403.

The surveying activity may need to complete additional forms as part of the survey. Those forms are:

- SF 1404, Preaward Survey of Prospective Contractor — Technical
- SF 1405, Preaward Survey of Prospective Contractor — Production
- SF 1406, Preaward Survey of Prospective Contractor — Quality Assurance
- SF 1407, Preaward Survey of Prospective Contractor — Financial Capability
- SF 1408, Preaward Survey of Prospective Contractor — Accounting System (SF 1408 will not usually be used relative to contracts awarded by sealed bidding).

When the prospective contractor surveyed is a small business that has received preferential treatment on an ongoing contract under Section 8(a) of the Small Business Act, or has received a COC during the last 12 months, the surveying activity shall consult the appropriate SBA field office before making a recommendation of responsibility or nonresponsibility.

Upon completion of the survey, the surveying activity will check one of the boxes in Item 24, SF 1403, to indicate whether it recommends:

- Complete award
- Partial award (and quantity)
- No award

The surveying activity will then return the SF 1403 to the CO together with any supplementing forms and remarks.

RESPONSIBILITY

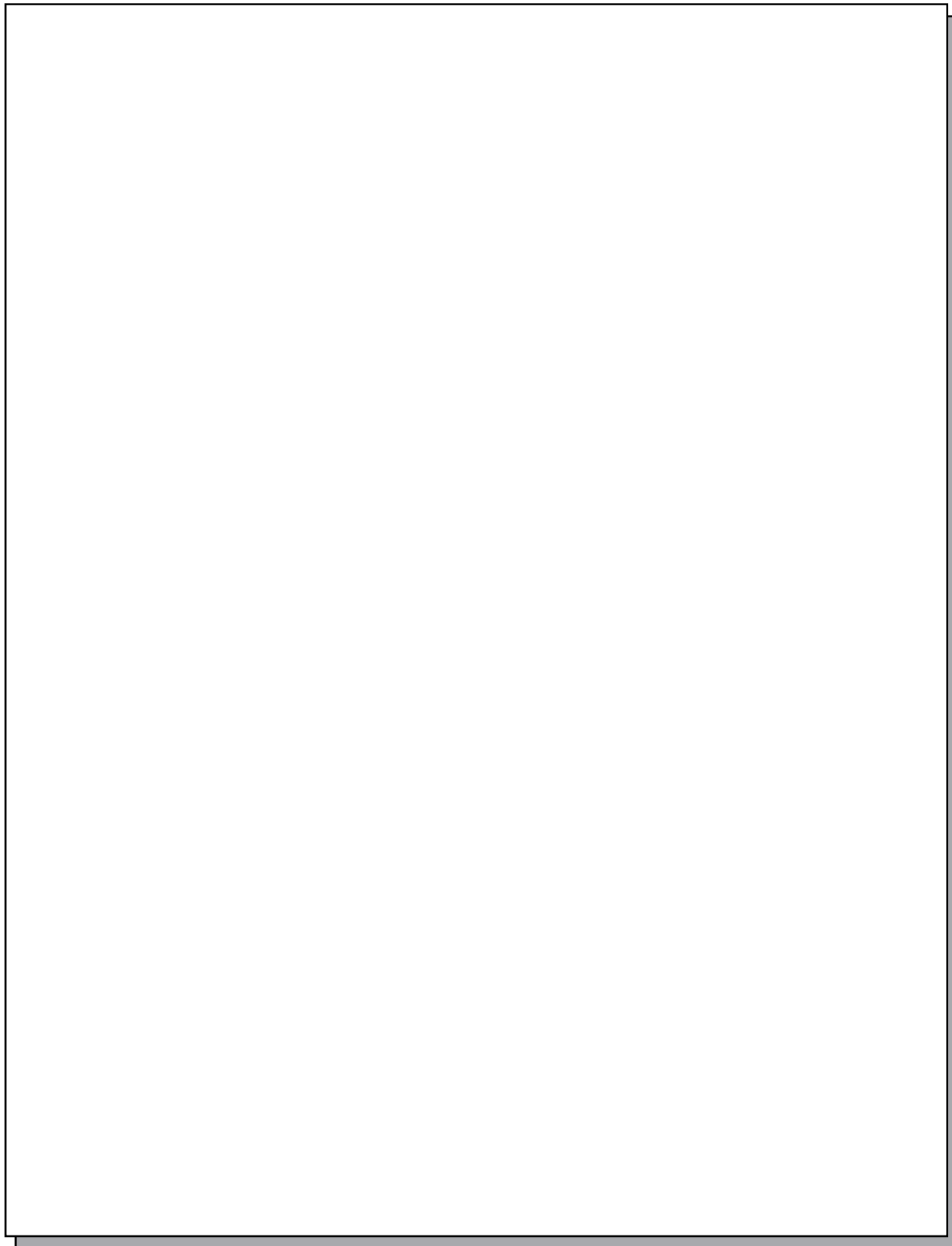


Exhibit 7-10. SF 1403 (Front Side).

STEPS FOR FILLING OUT STANDARD FORM 1403 (FRONT SIDE)

- 1** Survey group will fill in this number.
- 2** Name and address of surveying activity. The CO will designate who this will be. This might be a contract administration group.
- 3** CO places the IFB number here.
- 4** Place the total prospective contract price here.
- 5** Place a “fixed price” or “fixed price with EPA” here.
- 7** Place name and address of prospective contractor here.
- 9** Date of request.
- 10** Date survey report required (give a reasonable amount of time to do an adequate job).
- 17A** Name and title of person at firm that the surveying group should contact.
- 17B** The telephone number of person described in Item 17A.
- 18** Data on descriptions of items, quantities, deliveries, and prices that are going to be on the contract.

RESPONSIBILITY

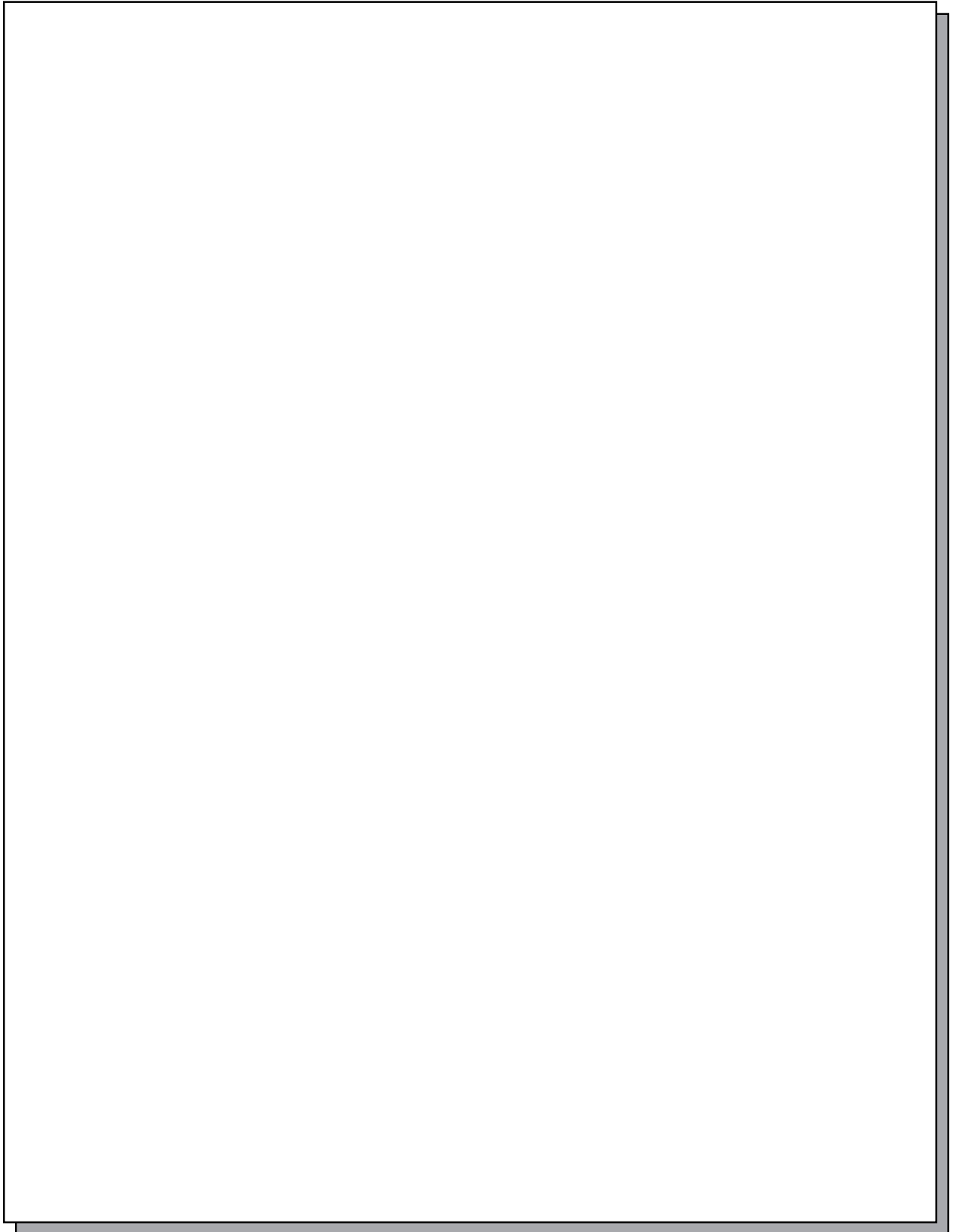


Exhibit 7-11. SF 1403 (Back Side).

STEPS FOR FILLING OUT STANDARD FORM 1403 (BACK SIDE)

- 19** Major factors to be investigated. CO should check those items that should be investigated.
- 20** Other factors. In this section and in “Remarks,” the CO should indicate the problem. For example, if it is “security” and the CO knows of a security problem, then the surveyor should be told of the specific problem.
- 21** Check, if appropriate.
- 22** Completed by the CO.
- 23** Remarks. Tell the surveyor all that he/she needs to know so that he/she can provide you with the data to approve or disapprove the award.
- 24** The surveyor fills out this section and makes recommendations.
- 25A** Surveyor will fill out when form is completed.
- 25B** Surveyor will fill out when form is completed.
- 25C** Surveyor will fill out when form is completed.
- 25D** Surveyor will fill out when form is completed.

RESPONSIBILITY

7.4.3 Review of Survey Report

After the CO receives the preaward survey report, the CO will review the data thereon, evaluate it, and compare it with the data received from other sources. Where necessary, the CO should contact the survey office to discuss any omissions or deficiencies with the survey report and obtain further information to clarify or buttress a finding. The preaward survey report should be given great weight! The surveying activity has made an on-site, in-depth review of the prospective contractor's plant, capabilities, and financial ability. However, the recommendation as to award is strictly a recommendation. The final decision to award or not to award is made by the CO.

7.5 DETERMINE THE RESPONSIBILITY OF SMALL BUSINESS CONCERNS

FAR 19.601(a)

In general, the standards and procedures used to determine the responsibility of small business concerns are the same as those used to determine the responsibility of large businesses. However, if the CO determines that a small business concern is not responsible relative to a particular procurement, the matter must be referred to the Small Business Administration (SBA) for a final decision. The SBA will then notify the concern and offer it the opportunity to apply for a COC. If the concern applies for a COC, the SBA (local Regional Office) investigates the matter. A COC is a certificate issued by the SBA stating that the holder is responsible (see standards in Exhibit 7-8 and any special standards) for the purpose of receiving and performing **a specific Government contract**.

7.5.1 Procedures for Issuing of a COC

Upon deciding and documenting that a responsive small business lacks certain elements of responsibility (see standards in Exhibit 7-8 and any special standards), the CO shall proceed with the following steps:

**WHEN THE CO DETERMINES THAT A SMALL BUSINESS
IS NONRESPONSIBLE**

FAR 19.602-1

The CO shall proceed as follows:

- Withhold contract award; and
- Refer the matter to the cognizant SBA Regional Office in accordance with agency procedures, except that referral is not necessary if the small business concern is:
 - Determined to be unqualified and ineligible (see last item of Exhibit 7-8) provided that the determination is approved by the chief of the contracting office; or
 - Is on the Lists of Parties Excluded from Federal Procurement or Non-procurement Programs.

Exhibit 7-12. Small Business Concern Responsibility Issue.

The referral to SBA by the CO shall consist of a notice that a small business concern:

- Has been determined to be non-responsible, specifying the elements of responsibility the CO found lacking; and
- If applicable:
 - Copy of the IFB,
 - Drawings,
 - Specifications,
 - Preaward survey findings,
 - Pertinent technical and financial information,
 - Abstract of bids, and
 - Any other pertinent information that supports the CO's determination.

RESPONSIBILITY

Within 15 business days (or a longer period agreed to by the SBA and the contracting agency) after receiving a notice that a small business concern lacks certain elements of responsibility, the SBA will take the actions outlined in Exhibit 7-13.

SBA ACTIONS CONCERNING A CASE OF NONRESPONSIBILITY

FAR 19.602-2

- Inform the small business concern of the CO's determination and offer it an opportunity to apply to the SBA for a COC.
- Upon timely receipt from the concern of the application and required documentation, send an SBA team to visit the concern. Investigate it only for the specific elements of responsibility that the agency notice specified as lacking. Make recommendations to the SBA Regional Administrator.
- If the Regional Administrator plans to issue or recommend issuance of a COC, provide advance notice of the proposed action to the CO together with a brief statement of the reasons for it.

Exhibit 7-13. SBA Actions Concerning a Case of Nonresponsibility.

FAR 19.602-3

If the CO disagrees with the Regional SBA proposal, he or she may decide to appeal to SBA Central Office for a final decision. In this case, the CO shall request that the SBA Regional Office suspend action and refer the case to the SBA CO for review.

The SBA Regional Administrator will then make a decision as follows:

| SBA REGIONAL ADMINISTRATOR DECISION | |
|--|---|
| IF THE REGIONAL ADMINISTRATOR: | THEN THE REGIONAL ADMINISTRATOR: |
| Confirms the Contracting Officer's finding of nonresponsibility | Notifies the concern and the CO that the COC is denied |
| Determines that the firm is able to perform the contract in question and the contract is \$500,000 or less | Issues the COC or forwards the recommendation to the SBA Central Office if the CO decides to appeal |
| Determines that the firm is able to perform the contract in question and the contract is over \$500,000 | Forwards a recommendation to the SBA Central Office that a COC be issued |

*Exhibit 7-14. SBA Regional Administrator Actions Concerning a Case of Nonresponsibility.
[VG 7-17 and 7-17a]*

Upon receipt of a recommendation from the Regional Administrator to issue a COC, the SBA Central Office shall take the following actions:

- Notify the concern and the CO that the COC is denied; or
- Send the COC to the CO and advise the concern of the action
- Inform the CO that it concurs with its Regional Office and allow the CO to file a formal appeal.
- Make the final determination and advise the CO and the concern of its action.

RESPONSIBILITY

7.5.2 Awarding the Contract After the COC Process Has Begun

There are three situations that might arise after the COC process has begun. They are:

- The CO might obtain new information that supports a determination that the concern is responsible. If so the CO shall:
 - Reverse the determination of nonresponsibility,
 - Notify the SBA of the action,
 - Withdraw the referral, and
 - Proceed to award the contract.
- If the SBA issues a COC after receiving the referral, the CO shall award the contract to the small business concern (if it is still otherwise eligible for award). An SBA-certified concern shall not be required to meet any other (i.e., new) requirements of responsibility. SBA COCs are conclusive with respect to all elements of responsibility.
- If SBA has not issued a COC within 15 business days (or a longer period of time agreed to with the SBA) after receiving the referral, the CO shall proceed with the acquisition and award the contract to another appropriately selected and responsible bidder .

FAR 19.602-4

7.6 OBTAINING PREAWARD EEO CLEARANCE FROM DEPARTMENT OF LABOR

FAR 22.805(a)

A preaward equal employment opportunity (EEO) clearance is required from the Department of Labor Office of Federal Contract Compliance Programs (OFCCP) if the estimated amount of the proposed contract is expected to total \$1 million or more. These rules relative to EEO clearances also apply to subcontracts, basic ordering agreements, or when increasing the aggregate value of an existing contract to \$1 million or more.

The CO shall request in writing, directly from the OFCCP regional office(s) the preaward clearance for each proposed contract and for each proposed first-tier subcontract of \$1 million or more. Verbal requests shall be confirmed in writing.

The CO shall allow as much time as feasible before award for the conduct of the necessary reviews by OFCCP. As soon as the apparently successful contractor is determined, the CO shall process a preaward review request in accordance with agency procedures. The CO should submit the preaward review request to the OFCCP regional office at least 30 calendar days before the proposed award date.

| DECISION TABLE—EEO CLEARANCES [FAR 22.805(a)(6-7)] | |
|--|---|
| IF: | THEN: |
| The Director of OFCCP has not made a final preaward clearance determination within 30 calendar days from submission of the clearance request. | The CO shall withhold award of the contract for an additional 15 calendar days, or until clearance is received, occurs first. |
| The additional 15 calendar days expires and The Director has neither found the contractor to be in compliance nor made a final written determination declaring the contractor ineligible for reasons of non-compliance. | The award may be made to the contractor in question and The CO shall notify the OFCCP regional office of the award. |
| The above procedures would delay award of an urgent and critical contract beyond the time necessary to make award or beyond the time specified in the bid or extension thereof. | The CO shall immediately inform the OFCCP regional office of the expiration date of the bid or the required date of award and request clearance be provided before that date. |
| The OFCCP regional office advises that a preaward review cannot be completed by the required date. | The CO shall submit written justification to the head of the contracting activity, who, after informing the OFCCP regional office, may then approve the award without the preaward clearance. |

Exhibit 7-15. Decisions on EEO Clearances.

RESPONSIBILITY

7.7 SUMMARY ON RESPONSIBILITY

| DECISION TABLE-DETERMINING RESPONSIBILITY | | |
|--|---|--|
| When the contracting officer determines that: | And the firm is a small business: | And the firm is other than a small business: |
| The firm is on the “Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs.” | Do not award. | Do not award. |
| The procurement is subject to the Walsh-Healey Public Contracts Act and the firm is not a regular dealer or manufacturer. | Do not award, notify the firm, and notify SBA of the finding. | Do not award and notify the firm of the finding and its appeal rights. |
| The firm is otherwise ineligible under a Federal law or regulation for award of the contract. | Do not award. | Do not award. |
| The firm’s performance record is not satisfactory. | Withhold award and refer the matter to SBA. | Do not award. |
| The firm is not capable of performing or of obtaining the resources necessary to perform (i.e., lacks the necessary financial resources, organization, experience, accounting, and operational controls, technical skills, or production, construction, and technical equipment and facilities). | Withhold award and refer the matter to SBA. | Do not award. |
| The firm is not available to perform in terms of meeting the delivery or performance schedule. | Withhold award and refer the matter to SBA. | Do not award. |
| The firm lacks integrity. | Withhold award and refer the matter to SBA. | Do not award. |
| The firm does not meet a special standard for the procurement. | Withhold award and refer the matter to SBA. | Do not award. |
| A COC will not be issued by SBA. | Do not award. | Not applicable. |
| Additional evidence now supports an affirmative determination of responsibility on a small business after a referral to SBA. | Notify SBA and award. | Not applicable. |
| Upon receiving notice from the SBA Regional Administrator of intent to issue an COC, that the firm is nonetheless nonresponsible. | Appeal to the SBA Central Office. | Not applicable. |
| Based on an OFCCP finding, the firm has not complied with EEO requirements. | Do not award. | Do not award. |

Exhibit 7-16. Decision Table - Determining Responsibility.

A LAST WORD ON RESPONSIBILITY

At the beginning of this chapter, we discussed an IFB in which, Ace Electronics, a small business, was the low bidder, and you were considering whether to award the contract. You had to determine whether Ace was a responsible bidder before you could make an award. You now know, after having read this chapter, that you need to review all readily available sources of information that may help you in this decision. If, after reviewing all data that may be readily available to you; obtaining data from other COs, audit agencies, contract administration units, and others; you still are not sure that Ace is responsible, you may request a preaward survey if the costs can be justified. When data is received from the preaward survey, you should review it carefully and make a decision.

The CO makes the final decision, except in the case of small businesses. If the CO judges the low bidder as not responsible, he/she may overrule the recommendations of the preaward survey. Ace is a small business. If the CO determines that it is not responsible, he/she has to refer the case to SBA for a possible issuance of a COC. If SBA makes a review and decides to issue a COC, the CO will have to award the contract even though the CO was of the opinion that Ace was nonresponsible.

This contract is for less than \$1 million. Therefore, a OFCCP preaward clearance is not required. Also, you have determined that Ace is a manufacturer (Walsh-Healey). Having jumped all the hurdles and obtained all the necessary clearances, the CO can now award the contract.

CHAPTER 8

AWARD OF CONTRACT

WHEN THE AWARD IS GREATER THAN THE PURCHASE REQUEST

Although most sealed bidding buys are relatively free of many of the problems presented in Chapter 7, it is important to be aware of the problems that may occur and to know how to solve them.

You have prepared and publicized an IFB for 100 radios. The IFB was neither amended nor cancelled. You have determined that Ace Electronics' bid, the lowest bid price, is both responsive and fair and reasonable in its price. You have also determined that Ace's bid is free of mistakes and that Ace is a responsible bidder. No EEO clearance is required because the contract price was under \$1 million. You are now ready to award a contract.

Some questions remain. Ace's bid was \$560,000 while the requiring activity had only committed \$480,000 on the purchase request.

What options are available to the agency? If sufficient funds can be made available, what are the steps in awarding this contract?

This chapter will explain in detail the process involved in awarding a contract.

AWARD OF CONTRACT

LEARNING OBJECTIVES

At the completion of this course, you will be able to:

Overall: Prepare contract, document recommendation for award, obtain approvals, execute contract, and prepare notices of award.

Individual:

1. Make final award decision in sealed bidding.
 - Explain procedure for briefing superiors on selection recommendation.
 - Prepare documentation of award (especially if the award is to someone other than the low bidder).
2. Formulate the contract and prepare appropriate notices of award.
 - Determine sufficiency of funding.
 - Prepare contract.
 - List the approvals needed before awarding contract.
 - Determine the steps taken in making a pre-award notification.
 - List the steps involved in executing a contract.
 - Make post-award notifications.

Exhibit 8-1. Learning Objectives.

CHAPTER INTRODUCTION

Judgement Decisions Leading to Recommendation for Award

Identifying to whom the CO will award the contract is, essentially, a process of elimination. This is not to say, however, that identifying the recommended bidder for award is an automatic process. Exhibit 8-2 presents judgmental decisions that:

- You must make before recommending a bidder for award, and
- Must be sustainable during the approval process.

JUDGEMENT DECISIONS IN SEALED BIDDING

- **Responsiveness.** Some questions of responsiveness, as compared to an apparent clerical mistake, might require a judgement call on your part.
- **Mistakes.** Even if a bidder does not allege a mistake, you might question a bid that is unusually low.
- **Competition.** The fact that you receive more than one bid does not necessarily mean that you have obtained true competition.
- **Reasonable Price.** You must decide whether or not the low responsive bid contains prices that are fair and reasonable.
- **Responsibility.** There are standards for responsibility, but determining whether or not a bidder meets these standards is often a matter of judgment.

Exhibit 8-2. Judgement Decisions in Sealed Bidding.

AWARD OF CONTRACT

Selection for Award

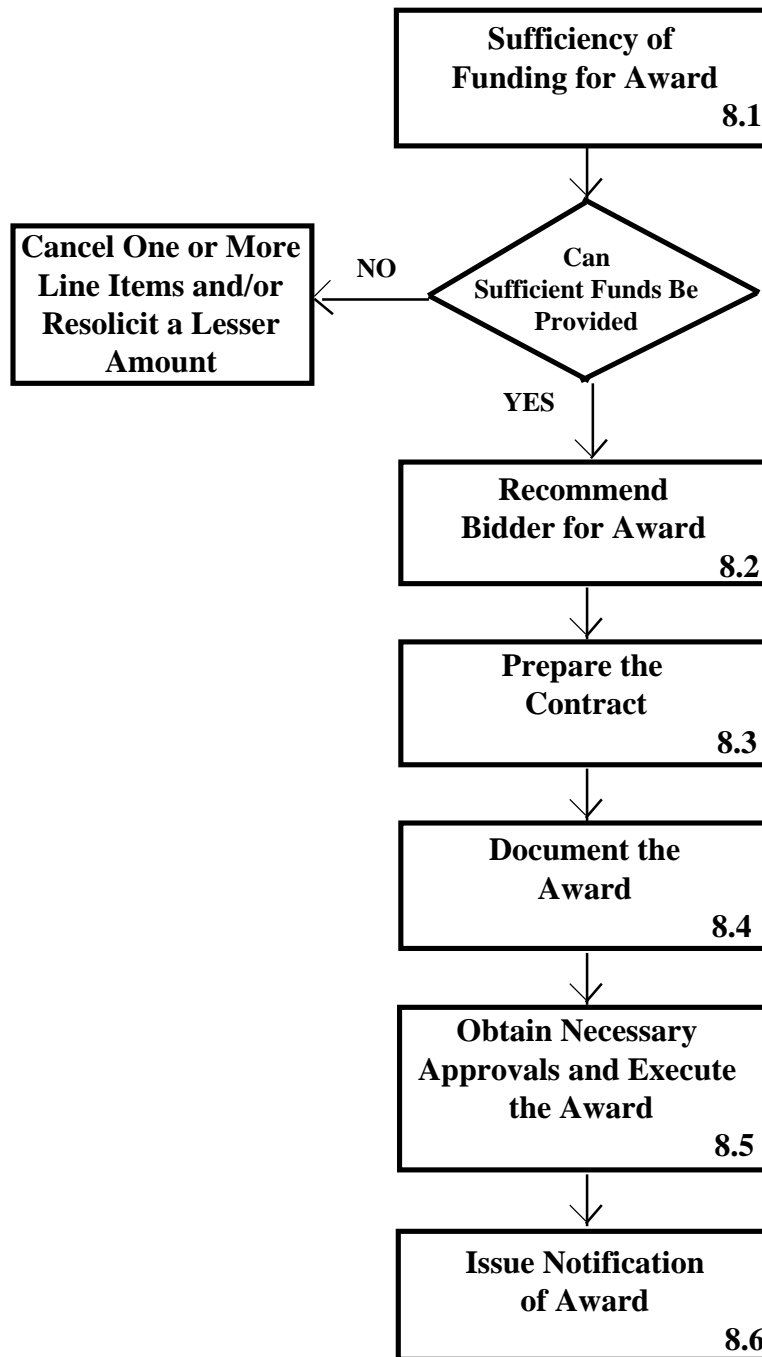
Because you have exercised good judgment and have carefully followed sealed bidding procedures, your CO will be able to make the selection for award. Your CO shall award the contract as follows:

FAR 14.407-1

- By written notice,
- Within the time for acceptance specified in the bid or an extension, and
- To that responsible bidder whose bid, conforming to the invitation, will be most advantageous to the Government, considering only price and the price-related factors included in the invitation.

Steps in Awarding a Contract

The steps in awarding the contract are charted on the next page. After the flowchart, each step is discussed in turn.

FLOWCHART OF STEPS IN AWARDING A CONTRACT*Exhibit 8-3. Flowchart of Steps in Awarding a Contract.*

AWARD OF CONTRACT

STEPS IN AWARDING A CONTRACT

8.1 SUFFICIENCY OF FUNDING FOR AWARD

One of the most important actions taken by a contracting officer before signing a contract is reconfirming that adequate funds are available. You determined that funds were available before the IFB was issued. Now you must reconfirm it. The typical sequence of events pertaining to funding is as follows:

- The purchase request that is originated by the technical or requirements organization includes an “Independent Government Cost Estimate.” For example, suppose the estimate is that the contract amount will be approximately \$75,000.
- The purchase request is routed through a finance and accounting office. That office “commits” \$75,000 from the correct appropriation fund for the proposed contract.
- The CO, upon receipt of the purchase request, confirms that the funds are available. It is not acceptable to invite bids unless adequate funds are available to make the purchase. In some instances, if the agency is not sure whether the funds will become available (as when waiting for Congress to appropriate money), the IFB will state that award of a contract is subject to the availability of funds.
- The bids have now been received and the award decision has been made. The “commitment” must now be converted to an “obligation.” The CO must now ensure that the funds are available for obligation before signing the contract. Also, because it is unlikely that the award will be exactly \$75,000, the finance office may have to make an upward or downward adjustment. If the award is for more than \$75,000, it is essential to confirm the availability of the additional funds before signing the contract.

8.1.1 Insufficient Funds

Generally, sufficient funds will be available to accommodate small increases over the amount committed on the purchase request. However, if substantial additional funds are needed, the agency must examine its options.

INSUFFICIENT FUNDS — ANSWER TO VIGNETTE

Using the case described at the beginning of the chapter, you have a low bid of \$560,000 but have only committed \$480,000. You have already determined that the price is fair and reasonable (thus indicating that the independent estimate was much too low/optimistic). What action should you now take? Consider these:

- *Notify the requiring activity of the shortfall. If additional funds are available and the activity wishes to complete the purchase, they will process an amendment to the purchase request to add more funds. The finance office will make the appropriate certification on the amendment and, upon receiving it, you can complete the purchase.*
- *If additional funds are not available or the requiring activity does not want to authorize the use of additional funds, you will consider buying a lesser quantity of the units — if such is agreeable to the requiring activity.*
- *If additional funds are not available, or the requiring activity cannot use a lesser quantity, or the bid is an all-or-none bid, you have no alternative other than to recommend cancellation of the procurement.*

Exhibit 8-4. Answer to Vignette.

8.2 RECOMMEND BIDDER FOR AWARD

Your recommendation to the CO reflects the fact that you identified the bidder through application of the prescribed procedures. The main task for the CO is to ensure, through review of the documentation, and, discussions with you, that you did the job correctly.

By this time any problem areas (e.g., an alleged mistake in bid) should have been resolved — with the approval of the CO. Typically, at this point in the process, the CO will expect you to substantiate that:

AWARD OF CONTRACT

- The prospective contractor is a responsible source, and
- The price is fair and reasonable.

Even though your recommendation may be sound, it is still the CO's responsibility to ensure that the items in Exhibit 8-5 have been achieved.

If you should determine that all bids must be rejected, you shall notify each bidder that all bids have been rejected and shall state the reason for such action. The originals of all rejected bids and all documentation concerning the rejections should be retained in the contract file. (See Chapter 4, Section 4.4 on cancelling after bid opening).

CO RESPONSIBILITIES IN SELECTION FOR AWARD

- As required at FAR 1.602-1(b), the CO shall ensure that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met.
- If applicable, multiple award and equal bid procedures have been handled correctly (see Chapter 5). NOTE: In the event of multiple awards, you will prepare multiple contracts.
- Sufficient funds are available for obligation. (FAR 1.602-2(a))
- If applicable, consider subcontracting plans.

Exhibit 8-5. CO Responsibilities in Selection for Award.

8.2.1 Subcontracting Plans

In acquisitions that are expected to exceed \$500,000, the bidder selected for award will be required to submit a plan for contracting with small business concerns and small disadvantaged business concerns.

When preparing the IFB, the CO shall include the provision at FAR 52.219-8 — Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, if the resulting contract is expected to exceed \$10,000 unless:

FAR 19.708(a)(2)

- A personal services contract is contemplated, or
- The contract will be performed outside the United States, the District of Columbia, or certain identified possessions and territories.

In addition, the CO shall also insert the clause at FAR 52.219-9 — Small Business and Small Disadvantaged Business Subcontracting Plan, with its Alternate I, in the IFB if:

- The resulting contract is expected to exceed \$500,000 (\$1 million for construction of any public facility),
- Subcontracting opportunities are expected to occur, and
- The clause at FAR 52.219-8 is required.

If the dollar thresholds stated above are reached by the bidder(s) selected for award, the CO will, before award:

FAR 19.704(a)

- Require the bidder selected for award to submit a subcontracting plan.
- Review the plan to determine whether it is acceptable in that it incorporates the required elements to make the award.
- If the CO finds the plan unacceptable in that it does not incorporate the required elements, the CO requests the bidder to submit a revised plan.
- If the plan, either as originally submitted or as revised, is responsive in that it incorporates the required elements, but evidences the bidder's intention not to comply with its obligations under the Utilization clause, the CO may find the bidder nonresponsible.
- If the selected bidder fails to submit the original plan, or a revised plan that does incorporate the required elements, within the time specified by the CO, the bidder shall be ineligible for award.

AWARD OF CONTRACT

8.2.2 Recommendation Rejected

If the CO rejects your recommendation, he or she will tell you why. Ordinarily, the CO should have little cause to reject your recommendation. However, you might be questioned relative to a judgment call. For example, the CO might not agree with you that the price is fair and reasonable, or that the bidder is responsible. If you cannot successfully defend your judgment, the CO could reject your recommendation.

The steps you would take after a rejection would depend on the nature of the rejection. Alternative action might include:

- Awarding the contract to the next low bidder. (Chapter 5)
- Cancelling the IFB and negotiating. (Chapter 5)

8.2.3 Recommendation Accepted

If the CO accepts your recommendation and all approvals and clearances have been obtained, the award decision is final, and you should then:

- Assemble all of the required documentation,
 - Complete the contract file,
 - Prepare the award document so that it is ready for the CO's signature, and
 - Give the agency public liaison office a preaward notice of the bidder or bidders selected for award, if applicable.
- duration for filling out the SF 33 and SF 26.)

8.3 PREPARE THE CONTRACT

FAR 14.204

If fewer than three bids have been received, the CO shall review the IFB to determine why there were so few responses. Award may be made in spite of the limited number of bids. However, the CO may initiate corrective action to increase competition in future IFBs for the same or similar items, and may include a notation of such action in the records of the file.

On awards of over \$5 million (or other dollar amounts as specified in agency acquisition regulations), COs shall make information available in sufficient time so that the agency concerned can announce it by 4:00 PM, Washington, D.C. time, on the day of the award.

8.3.1 Multiple Awards

FAR 14.407-1(c)

When more than one award results from a single IFB, separate award documents shall be suitably numbered and executed. On occasion, an award is made for less than all of the items that may be awarded, with the additional items are being withheld for subsequent award. In this case, the award shall state that the Government may make subsequent awards on additional items. The subsequent awards must occur within the bid acceptance period.

8.3.2 Preparation and Execution

All provisions of the IFB, including any acceptable additions or changes made by the bidder in its bid, shall be clearly and accurately set forth (either expressly or by reference) in the award document. The award is an acceptance of the bid. Together, the bid and the award constitute the contract.

| | |
|--------------------|---|
| General Procedure: | CO awards the contract by signing the award section of the SF 33, Solicitation, Offer, and Award. |
|--------------------|---|

| | |
|---|---|
| If a bid has been changed (e.g., correction of mistakes in bids): | The changed bid becomes a new offer. Therefore, a bilateral form, the SF 26, Award/Contract, must be completed because a new signature is required of the bidder. |
|---|---|

| | |
|---|--|
| If the bidder amends his or her bid in writing: | The amended bid may be accepted by using the award portion of either the SF 33 or SF 26. |
|---|--|

FAR 14.407-1(d)

Use of the award portion of SF 33 or SF 26 does not preclude the additional use of informal documents, including telegrams, as notices of award. (The following pages show the correct procedure for filling out the SF 33 and SF 26.)

AWARD OF CONTRACT

SF 33

Exhibit 8-6. SF 33 (Award Portion).

STEPS IN FILLING OUT THE AWARD PORTION OF THE SF 33

NOTES: A warranted contracting officer that has the appropriate authority will make award by completing and signing the award portion of the SF 33.

You completed the solicitation portion when you prepared the IFB. The bidder completed the offer portion when making his or her bid.

Block 19 Indicate what items in the IFB are being awarded in this contract.

Block 20 Indicate the dollar amount of the contract.

Block 21 Insert accounting data. Supplied by fiscal officer.

Block 23 Insert "25."

Block 25 Insert name and address of disbursing office.

Block 28 Insert award date, generally the date the CO signs the form.

AWARD OF CONTRACT

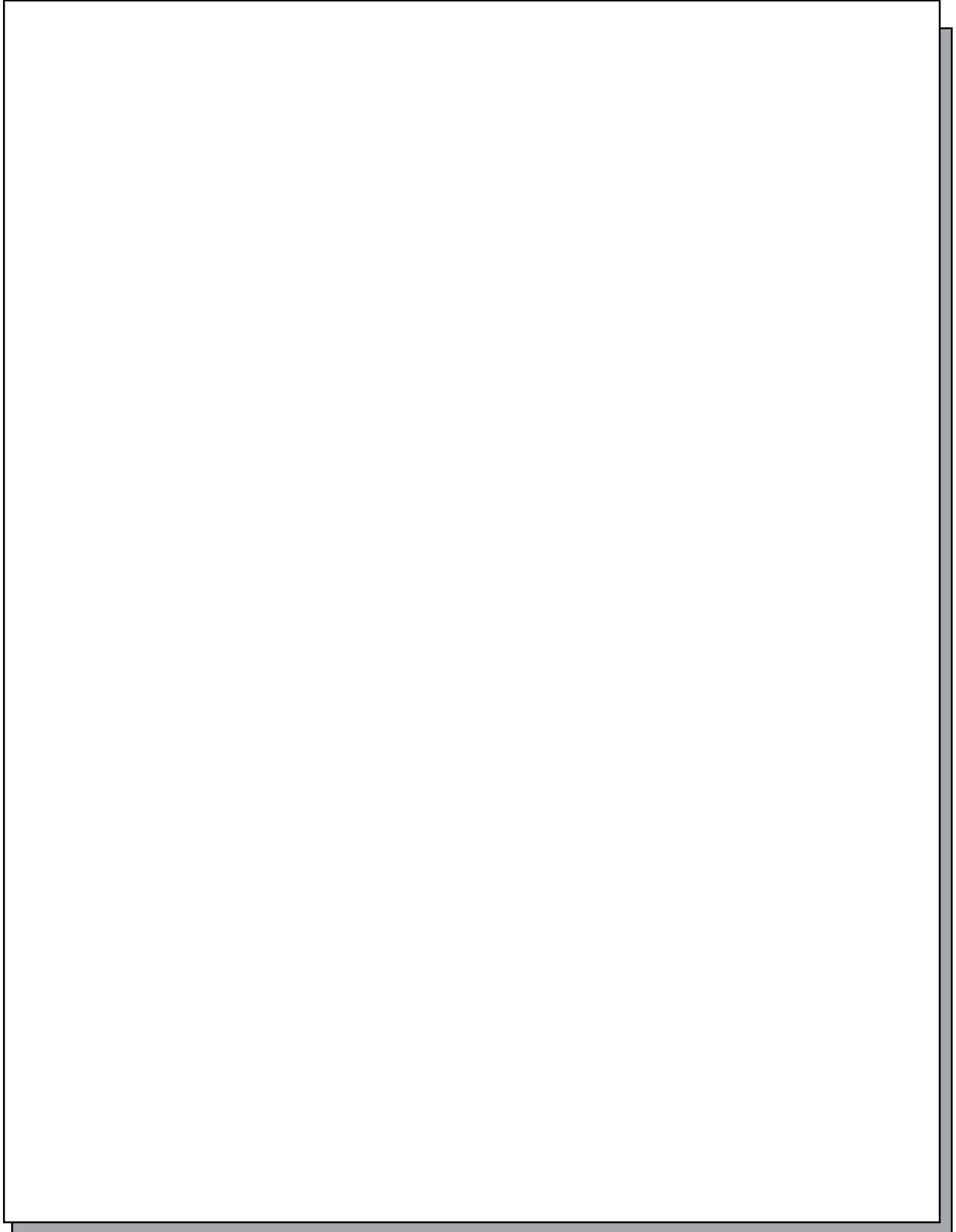


Exhibit 8-7. SF 26.

STEPS IN FILLING OUT THE SF 26

NOTES: This may become a contract when issued or it may be a bilateral action, requiring first the contractor to sign, then the CO to sign. The CO signs a copy of the document and sends it to the contractor. When the CO signs it, it is a contract (see FAR 14.407-1(d)).

- Block 3 Insert same date as in Item 20, the date the CO signs the contract.
- Block 5 Insert name and address of purchasing office.
- Block 6 Insert name and address of contract administration office.
- Block 10 Insert "12."
- Block 11 Insert where the items under contract are to be delivered.
- Block 12 Insert name and address of disbursing office.
- Block 15 Insert here:
 Item numbers from IFB
 Description of supplies or services
 Quantity
 Unit
 Unit price
 Amount (show total amount of contract)
- Block 16 Check all items, except Part IV which will not be sent with the contract package. It will be incorporated by reference. (FAR 14.201-1(c))
- Block 17 If applicable, check block, and indicate number of copies you want returned. This is a bilateral action. Contractor signs first, then CO signs and sends copies to contractor.
- Block 18 If applicable, check block, and insert IFB number in space. This is a unilateral action. When the CO signs, a contract is in effect.

AWARD OF CONTRACT

8.4 DOCUMENT THE AWARD

The essential documentation to support an award decision has been accumulated throughout the sealed bidding process.

Exhibit 8-8 lists several reasons why such documentation is important.

REASONS FOR DOCUMENTING AWARD

- Support the award decision.
- Confirm that any required clearances or approvals have been obtained.
- Defend against protests.
- Confirm compliance with regulations if audited by the IG, GAO, Procurement Management Review, etc.

Exhibit 8-8. Reasons for Documenting Award.

FAR 14.407-7

The CO shall ensure that the contract file contains documentation to demonstrate full compliance with FAR 14.103-2. The documentation shall include a statement that either the accepted bid was the lowest bid received, or list all lower bids and the reasons for their rejection. When an award is made after receipt of equal low bids, the documentation shall describe how the tie was broken.

8.4.1 Contract File Documentation

In many locations within this text, you have been alerted to document certain actions pertaining to the procurement action. Because there are also other actions that should be documented, this section serves both as a reminder and a checklist for documentation requirements. If you encounter any unusual circumstance(s) not listed as an action to be documented and if the circumstance has any impact or effect on the procurement, you should definitely document it.

FAR Subpart 4.8 — Contract Files, addresses documentation requirements in three ways:

- General requirements for, and purpose of, contract files.
- Various types of files and maintenance of them.
- Examples of records normally contained in contract files.

8.4.1.1 General Purpose of Files

FAR 4.801

In brief, the documentation in the files shall be sufficient to constitute a complete history of the transaction for the purpose of:

- Providing the background for informed decisions at each step in the acquisition process.
- Supporting actions taken.
- Providing information for reviews and investigations.
- Furnishing information in the event of litigation or congressional inquiries.

The files to be established include files for:

- Cancelled solicitations.
- Each contract.
- A contractor general file to contain documents of a general nature, (e.g., contractor's management systems, past performance over several contracts, or capabilities).

AWARD OF CONTRACT

8.4.1.2 Various Types of Files

The following files are representative of the file system:

- contract (purchase) files,
- contract administration files,
- files that are maintained at various organizational levels,
- central and decentralized files, etc.

FAR 4.802

8.4.1.3 Contents of Contract Files

Your job is to properly and comprehensively document the files by seeing to it that the required and otherwise appropriate documentation is placed in the contract file.

FAR 4.803

FAR 4.803 lists examples of the records normally contained, if applicable, in contract files. The files are divided into (a) Contracting Office contract file and (b) Contract Administration Office contract file. The 41 examples listed in (a) are included in the following listing:

1. Purchase request & acquisition plan.
2. J & A and D & F's.
3. Funds.
4. Synopsis.
5. Sources.
6. Set-aside decision.
7. Estimate.
8. IFB or RFP.
9. Security or clearances.

10. A copy of each offer or quotation, the related abstract, and records of determinations concerning late offers or quotations. Unsuccessful offers or quotations may be maintained separately, if cross-referenced to the contract file. The only portions of the unsuccessful offer or quotation that need be retained are:
 - (i) Completed solicitation sections A, B, and K;
 - (ii) Technical and management proposals;
 - (iii) Cost/price proposals; and
 - (iv) Any other pages of the solicitation that the offeror or quoter has altered or annotated.
11. Contractor's contingent fee representation and other certifications and representations.
12. Preaward survey reports or reference to previous preaward survey reports relied upon.
13. Source selection documentation.
14. Contracting officer's determination of the contractor's responsibility.
15. Small Business Administration Certificate of Competency.
16. Records of contractor's compliance with labor policies including equal employment opportunity policies.
17. Cost or pricing data and Certificates of Current Cost or Pricing Data or a required justification for waiver.
18. Packaging and transportation data.
19. Cost or price analysis.
20. Audit reports or reasons for waiver.
21. Record of negotiation.
22. Justification for type of contract.
23. Authority for deviations from this regulation, statutory requirements, or other restrictions.

AWARD OF CONTRACT

24. Required approvals of award and evidence of legal review.
25. Notice of award.
26. The original of (i) the signed contract or award, (ii) all contract modifications, and (iii) documents supporting modifications executed by the contracting office.
27. Synopsis of award or reference thereto.
28. Notice to unsuccessful quoters or offerors and record of any debriefing.
29. Acquisition management reports (see Subpart 4.6).
30. Bid, performance, payment, or other bond documents, or a reference thereto, and notices to sureties.
31. Report of postaward conference.
32. Notice to proceed, stop orders, and any overtime premium approvals granted at the time of award.
33. Documents requesting and authorizing modification in the normal assignment of contract administration functions and responsibility.
34. Approvals or disapprovals of requests for waivers or deviations from contract requirements.
35. Rejected engineering change proposals. These proposals may be filed separately for early disposal (see 4.805(h)).
36. Royalty, invention, and copyright reports (including invention disclosures) or reference thereto.
37. Contract completion documents.
38. Documentation regarding termination actions for which the contracting office is responsible.
39. Cross-references to pertinent documents that are filed elsewhere.

- 40. Any additional documents on which action was taken or that reflect actions by the contracting office pertinent to the contract.
- 41. A current chronological list identifying the awarding and successor contracting officers, with inclusive dates of responsibility.

8.5 OBTAIN APPROVALS AND EXECUTE THE AWARD

For sealed bidding procurements, agency procedures generally provide for preaward legal review and for another level of preaward review. The reason for the absence of numerous approval requirements is that the award is objective in nature (i.e., award to the low bidder).

Conversely, when using negotiation procedures, the award may be based on technical and management factors in addition to cost. The award will perhaps not be made to the lowest-priced offeror. Thus, the award decision becomes less objective. Therefore, in order to insert some discipline and safeguards into that process, award decisions are generally subject to several clearance or approval procedures where negotiation is the method of procurement.

8.5.1 Legal Review

A legal review is almost always required. Legal approval ensures that the proposed contract is legally “sufficient” — that all the requirements of laws and regulation have been met and that the contract will be enforceable. Typically, the legal review and approval process does not include a review of your judgment decisions unless any premises upon which you based your judgment appear faulty.

One special item that the attorney will confirm (and you should have already done so) is whether the bidder’s signature meets the requirements of FAR 4.1, Contract Execution. Signature requirements vary depending on whether the bidder is an individual, partnership, a corporation, or a joint venture (or when an agent signs on behalf of one of them).

The attorney who performs the legal review may be in the Office of Counsel, Office of the General Counsel, the Judge Advocate General’s Office, or other such organization within your contracting activity or agency.

AWARD OF CONTRACT

8.5.2 Execute the Award

Award shall be made by mailing or otherwise providing a properly executed award document to the successful bidder.

8.6 ISSUE NOTIFICATION OF AWARD

The CO has signed the award document — your contract action is substantially completed. However, you must perform two additional tasks: (1) you must distribute the contract and (2) complete post-award notifications.

8.6.1 Contract Distribution

The following individuals and agencies shall receive a copy of the contract:

CONTRACT DISTRIBUTION

FAR 4.2

- The contractor (awardee)
- Finance and accounting or paying office, if different
- Contract administration office, if appropriate
- The official contract file
- Other offices as prescribed by agency policy

Exhibit 8-9. Contract Distribution.

Additional requirements may be in your agency's regulations.

Copies of a contract must be distributed within 10 working days after execution by all parties.

Be sure to retain your initial contract distribution list. Any later modifications to the contract must be sent to the same locations.

8.6.2 Post-Award Notifications

FAR 5.303

Any release of information prior to the 5:00 p.m. official public announcement is improper. Even if award is to be made to the apparent low bidder, the release of such information should occur only in accordance with agency regulations. When making post-award notifications, the CO shall, as a minimum, perform the following steps:

POST-AWARD NOTIFICATIONS

- Notify unsuccessful bidders promptly. Extend appreciation for the interest the unsuccessful bidders have shown in submitting their bids.
- When award is made to other than the low bidder, state the reason for rejection in the notice to each of the unsuccessful low bidders.

Exhibit 8-10. Post-award Notifications.

FAR 14.408-1

Notification to unsuccessful bidders may be oral or in writing. Agencies often use form postal cards to notify unsuccessful bidders.

If unsuccessful bidders request additional information, the CO shall provide the following information:

INFORMATION PROVIDED TO UNSUCCESSFUL BIDDERS UPON REQUEST

- Name and address of the successful bidder
- Contract price
- Location where a copy of the abstract of bids is available for inspection

Exhibit 8-11. Information Provided to Unsuccessful Bidders Upon Request.

AWARD OF CONTRACT

If multiple awards have been made and furnishing information on the successful bids would require so much work as to interfere with normal operations of the contracting office, only information concerning location of the abstract of bids need be given.

FAR 14.408-1

Ordinarily, a request for information on the successful bids to an unclassified invitation is received from an inquirer who is neither a bidder nor a representative of a bidder. In such cases, the CO should furnish the names of successful bidders and, if requested, the prices at which awards were made. However, when such requests require so much work as to interfere with the normal operations of the contracting office, the inquirer will be advised where a copy of the abstract of bids may be seen.

Requests for records are governed by agency regulations implementing FAR 24.2 (Freedom of Information Act).

8.6.3 Synopses of Contract Awards Likely to Result in Subcontracts

The Government encourages open competition among subcontractors who support prime contractors on large contracts. Accordingly, the CO shall synopses in the CBD any awards greater than \$25,000 that are likely to result in subcontracts. Exceptions noted in FAR 5.301(b) applicable to sealed bidding are:

- Notice would disclose the executive agency's needs and the disclosure of such needs would compromise the national security.
- Award is made for perishable subsistence supplies.
- Award is for utility services, other than telecommunications services, and only one source is available.

The CO shall transmit synopses of contract awards in the same manner as set forth in Chapter 3.

FAR 5.206

The contractor may also use the Commerce Business Daily to announce subcontracting opportunities for small, small disadvantaged and women-owned firms.

8.6.4 FPDS Input

FAR 4.602

Upon award, you must complete a Standard Form 279, Federal Procurement Data System (FPDS) - Individual Contract Action Report or agency equivalent and submit to the Federal Procurement Data Center. The FPDS provides a comprehensive mechanism for assembling, organizing and presenting contract data for the Federal government. The FPDS reporting manual establishes what is to be collected. For each awardee you must obtain a Contractor Establishment Code using the procedures outlined in the FPDS manual. The FPDS is used to report Contract awards and modifications exceeding \$25,000 are required to the IRS. Most agencies have some level of automation for collecting and reporting data.

**A LAST WORD ON AWARDING CONTRACTS
A REVIEW OF THE VIGNETTE**

Lets go back to the vignette at the beginning of this chapter. Even after the CO has obtained any approvals and clearances that may have been required, he/she must review the file documentation and the contract draft before signing the award document. As the agent for the Government, the CO is responsible for ensuring compliance with laws and regulations and for making the award decision.

FAR 5.303 prescribes requirements for the announcement of contract awards. One requirement is that for awards over \$5 million, the CO will make information available on the award so that the agency can make a formal announcement by 4:00 PM, Washington, D.C. time, on the day of award.

After the award is announced, the CO notifies the unsuccessful bidders and synthesizes award information in the CBD.

The CO has completed the award process on a sealed bid.

Exhibit 8-12. Vignette Review.

CHAPTER 9

PROTESTS

JONES RADIO COMPANY PROTEST

After you perform the great efforts described in the previous chapters, you finally award a contract to Ace Electronics and go on to other solicitations. A week later, Jones Radio Company calls to complain about the award, alleging that Ace was not the low, responsive, responsible bidder and that the award should have gone to Jones. (Jones might also allege other bases for the protest, for example, apparent favoritism toward Ace and poorly drafted specifications.) Jones also indicates that if something is not done to correct the problem, he plans to protest to GAO, and maybe go to court. What should you do now?

PROTESTS

LEARNING OBJECTIVES

At the completion of this course, you will be able to:

Overall: Develop and forward the Government's position on the protest, and document the resolution of the protest.

Individual:

1. Protests filed with the agency
 - Describe steps the CO takes in dealing with a verbal complaint about a solicitation.
 - State and describe the steps the CO takes in dealing with a written complaint about a solicitation.
 - Given a decision to uphold the protest, identify course of action to resolve it.
 - State what to do in responding to a protest.
2. Protests filed with the Small Business Administration
 - Describe the steps to take in protesting a small business representation.
3. Protest concerning the Walsh-Healey Public Contracts Act
 - Describe the steps to take in protesting the eligibility of an offeror.
4. Preaward protests filed directly with GAO
 - State the steps involved in preparing and forwarding findings of fact and recommendations regarding whether to proceed or to delay award.
 - State the steps to take when GAO says "advisable not to award."
5. Post-award protests filed directly with GAO.
 - State the steps involved in preparing and forwarding findings of fact and recommendations regarding proceed or delay.

LEARNING OBJECTIVES (CON'T)

- Describe how the CO will determine whether to authorize contract performance notwithstanding the protest.
 - Describe how the CO will determine whether to appeal.
 - Describe the procedure for preparing an appeal.
 - State and describe the steps for implementing GAO's recommendation.
6. Protests that go to court.
- Describe how to prepare affidavit and memorandum of facts upon notification of court filing.
 - Describe how to respond to discovery motions for written records.
 - Describe how to implement the court's decision.
7. For all protests
- List the steps in preparing a memorandum for record concerning the protest.

Exhibit 9-1. Learning Objectives.

PROTESTS

NOTES

CHAPTER INTRODUCTION

Definition for Protests A “protest” is defined as a written objection by an interested party to a solicitation for offers for a proposed contract for the acquisition of supplies or services. Or a protest could be a written objection by an interested party to a proposed award or the award of such a contract.

Definition for Interested Party An “interested party” for the purpose of filing a protest means an actual or prospective offeror whose direct economic interest could be affected by the award of a contract or by the failure to award a contract.

Purpose of Protest Procedures Protests are filed when one offeror feels that another offeror won a contract unfairly. There are specific procedures for filing protests. In this chapter you will be given general guidance as to what steps to take should an interested party submit a protest regarding one of your IFBs. The action that you take will be affected by whether the protest is submitted:

- Before award, or
- After award, **and**

whether filed directly with:

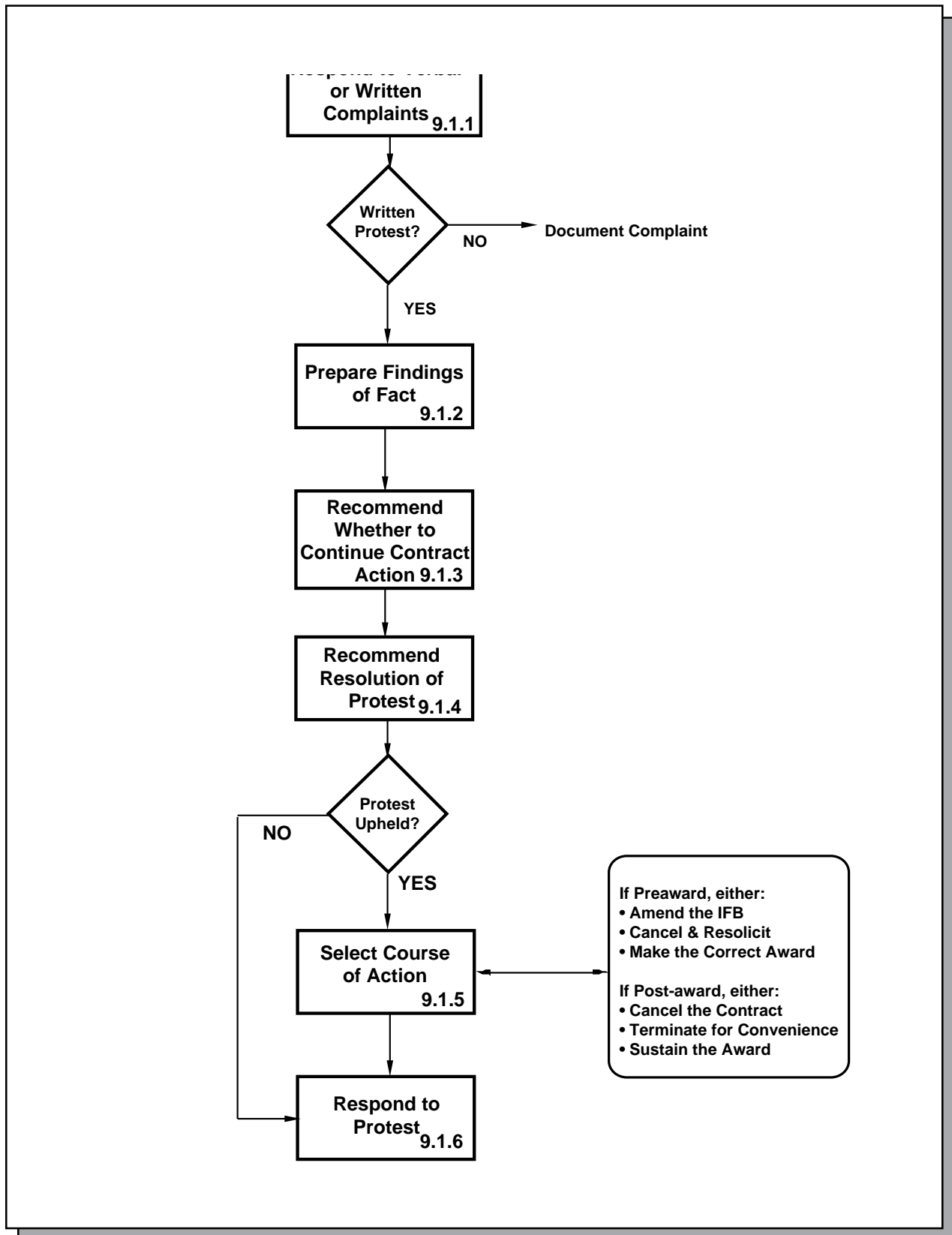
- The agency
- The General Accounting Office (GAO), or
- The General Services Board of Contract Appeals (GSBCA) for automatic data processing (ADP) acquisitions under 40 USC 759, **and**

whether the protest is sustained or denied.

Regulations Concerning Protests In addition to the guidance at FAR Subpart 33.1 — Protests and other FAR references cited herein, the following regulations from the Code of Federal Regulations (CFR) are applicable to protests:

1. Protest filed with the GAO: CFR Part 21
2. Protest on ADP filed with the GSBCA: 48 CFR Part 61
3. Protests filed with SBA: 13 CFR 121
4. Protest filed with Labor: 41 CFR 50

PROTESTS



9.1 PROTESTS FILED WITH THE AGENCY

9.1.1 Respond to Verbal or Written Complaints

Many protests begin with a phone call from a bidder, in which the bidder voices a complaint about the procurement and the way the procurement has been handled to that point. How you answer that first phone call may trigger a full blown, time consuming written protest at both the agency and other protest forums. Or, with a little tact and a few facts, the protest might begin and end with that call. Hence, consider the following do's and don'ts:

| RESPONDING TO A VERBAL COMPLAINT | |
|--|--|
| DO: | DON'T: |
| Ask questions to define the issue | Debate or criticize the bidder. |
| Rephrase the issue to the protestor, and | Limit your phone conversations to (a) questions that define the issue and (b) statements of fact. |
| Ask the protestor if you have correctly stated it. | |
| Disclose any facts about the procurement that address the issue, disclosure of those facts is permitted at that time to competing contractors. (See Chapter 3) | Release facts about the responsibility of other bidders, other proprietary data, or any other facts that may not be disclosed to competing contractors at that point in the procurement. |
| Break for factfinding, if you need to research the case to identify the pertinent facts. | |
| Tell the bidder about sources of information on the different protest forums. | Withhold protest and appeal procedures when asked. |
| Instruct the bidder to put the protest in writing by a specific date when the bidder is not satisfied by your verbal response. | Agree, on the spot, to sustain or deny the protest. |
| Document the call. | Ignore the complaint |

Exhibit 9-3. Responding to Verbal Complaints.

PROTESTS

If you receive the protest in writing, you may be the one to initiate a phone call to the protestor, to (a) ask questions that define the issue and (b) otherwise clarify the protestor's written statement. Observe the same do's and don't's in making such a call.

9.1.2 Prepare Findings of Fact

In order to make a decision as to whether to sustain or deny the protest, the CO must assemble, review, and evaluate all pertinent information relating to the procurement and to the protest. This process involves a great deal of factfinding and may involve you, the CO, legal counsel, and requirements or technical personnel. The information gathered may be put into a statement called a Findings of Fact. Typically, this statement includes a chronological detailing of events, from receipt of the purchase request to award of the contract — or to whatever point in the process was reached when the protest was filed.

Procurement events in the statement will include, as appropriate:

INFORMATION THAT MAY BE INCLUDED IN THE FINDINGS OF FACT

- All dates involved
- CBD dates
- Number of IFBs released
- Number of bids received
- Evaluation factors
- Handling of late bids and modifications of bids
- Amendments to IFBs
- Resolution of mistakes in bids
- All-or-none or other factors affecting award

Exhibit 9-4. Information That May Be Included in the Findings of Fact.

If the protest pertains to the substance of the IFB (e.g., an allegation that the statement of work or specifications are unduly restrictive), the factfinding would be expanded to include, as appropriate:

- The procurement history of the item.
- Reasons for restrictions (if, in fact, there are restrictions).
- Quantity requirements.
- Time constraints.
- Special factors for responsibility.
- Other pertinent aspects of the procurement.

At the same time factfinding is conducted to determine what the agency did, similar consideration must be given to determine whether the protest accurately states the pertinent facts. An early recognition of an incorrect statement or assumption in the protest could negate the need for exhaustive factfinding.

Because the decision to be rendered must be based on fact, factfinding must be thorough, accurate, honest — and results must be documented. Once factfinding is completed, the CO (or other authority) will evaluate the findings and then make the appropriate decision.

9.1.3 Recommend Whether to Continue Contract Action or Performance

When a protest is filed with the agency, an award shall not be made until the matter is resolved, unless the CO or other designated official first determines that one of the following conditions applies.

PROTESTS

AWARDING A CONTRACT WITH PROTEST PENDING

An award can be made even though a protest is pending if the CO* determines that:

- The supplies or services to be contracted for are urgently required.
- Delivery or performance will be unduly delayed by failure to make award promptly.
- A prompt award will otherwise be advantageous to the Government.

* Or other official designated by your agency's regulations.

Exhibit 9-5. Awarding a Contract With Protest Pending.

When you receive a protest against making an award and the award will be withheld pending disposition of the protest, complete the steps shown in Exhibit 9-6.

WITHHOLDING AWARD PENDING RESOLUTION OF A PROTEST

- Inform the bidders whose bids might be eligible for award if the protest is upheld.
- If appropriate, request those bidders, before the time for acceptance of their bids has expired, to extend the time for acceptance in order to avoid the need for resolicitation.
- Investigate the basis for the protest.
- If you fail to obtain the time extensions of the bids, consider proceeding with award as set forth in Exhibit 9-5.

Exhibit 9-6. Withholding Award Pending Resolution of a Protest.

Exhibit 9-7 describes how to handle protests received after award.

PROTESTS FILED WITH THE AGENCY AFTER AWARD

- Handle protests that are filed only with the agency and that are filed after award in accordance with agency procedures.
- The CO need not suspend contract performance or terminate the awarded contract unless it appears likely that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Government's interest.
- The CO should consider seeking a mutual agreement with the contractor to suspend performance on a no-cost basis (FAR 33.103) or, if appropriate, he or she should issue a "stop-work" order as provided in the "Protest After Award" clause in the contract (see FAR 52.233-3).

Exhibit 9-7. Protests Filed With The Agency After Award.

A review of the language at FAR 33.103 (see Exhibits 9-5 and 9-7) makes it clear that only after careful review and analysis of the facts should a decision be made to continue a procurement action or continue contract performance pending the resolution of a dispute.

As frequently noted in the FAR, contracting is a team effort. Use your team now! Obtain firm, well-founded, and documented information from the technical or requirements organizations involved; have them tell you the pros and cons pertaining to a decision to "continue" as opposed to a decision to "wait." Concurrently, get legal counsel involved. Counsel will be able to give you some sound advice, but more than anything else, counsel can research previous decisions of the Comptroller General (Comp. Gen.) or the General Services Board of Contract Appeals (GSBCA) for information on decisions made on similar protests. Knowledge of previous Comp. Gen. and GSBCA decisions is one of the most valuable sources of guidance for even the most experienced COs.

Sometimes you believe that you cannot support a "continue" decision, even though it might appear that a protest is based on weak assumptions or is without great merit and has little chance of being sustained. Or, sometimes the protest might have merit and you believe it has a reasonable chance or better of being sustained. In either of these situations, you

PROTESTS

should recommend that the contract action be delayed or, if award has been made, seek a suspension of performance.

You should not, however, think that recommending a resolution of the protest is an expediency to avoid dealing with a “wrong” (as it might turn out) decision to “continue.” As in the case of a decision to “continue,” you must weigh the operational impact of a decision to put (or not to put) a hold on any aspect of the acquisitions.

If the facts appear to be sufficient to “continue,” then by all means continue. But, also understand that a decision to continue, in either situation, is a momentous one. It should be based on thorough investigation; sound, reliable advice; and plenty of documentation.

9.1.4 Recommend Resolution of Protest

After you complete factfinding, you are now ready to recommend either sustaining or denying the protest. This decision is a function of:

- The facts.
- Policies in the Federal Acquisition Regulation and your agency’s FAR Supplements.
- Case law (e.g., Comptroller General decisions)

The basic issue in any protest is whether, given the facts, the agency complied with the applicable policies as interpreted by the GAO.

Even though the agency may not necessarily believe itself to be bound by a given Comptroller General decision, it is important to know how the GAO might rule—given the fact that protest may next go to GAO. It is even possible to request an advisory opinion from GAO on the agency protest. Generally, CO’s turn the task of researching case law over to the legal staff. In the final analysis, however, the CO generally makes the decision to sustain or uphold an agency protest.

When you recommend a resolution of the protest, support that recommendation with a findings of fact and appropriate documentation.

9.1.5 Select Course of Action

If the agency sustains the protest, one of the actions shown in Exhibit 9-8 (Preaward Protests) or Exhibit 9-9 (Post award Protests) is generally appropriate, depending on the circumstances.

| DECISION TABLE ON SUSTAINED PREAWARD PROTESTS | |
|--|---|
| CONDITION: | PRESCRIBED ACTION: |
| If the protest was sustained: | Then: |
| Prior to bid opening | Either amend or cancel the IFB (See Chapter 4) |
| After bid opening and a correct award cannot be made | Cancel the IFB (See Chapter 4) |
| After bid opening and a correct award can be made | Award to the responsible bidder who submitted the lowest responsive bid if the price bid is fair and reasonable |

Exhibit 9-8. Decision Table on Sustained Preaward Protests.

| ACTION FOLLOWING A SUSTAINED POSTAWARD PROTEST |
|---|
| <ul style="list-style-type: none"> • Cancel the award as being improperly awarded; or • Terminate for convenience; or • Allow the award to stand. The decision to let the award stand could be based on several factors including: <ul style="list-style-type: none"> - Degree of performance already completed - Need to prevent performance delays, and - Incumbent contractor's good faith in entering into the contract. |

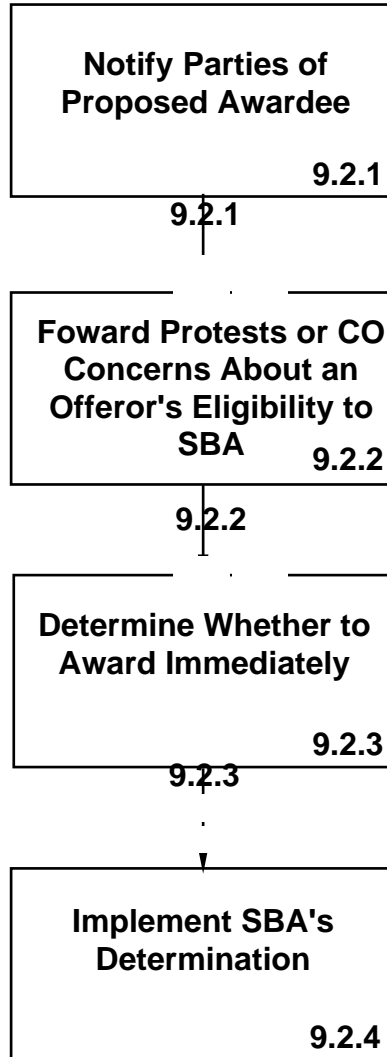
Exhibit 9-9. Action Following a Sustained Postaward Protest.

PROTESTS

9.1.6 Respond to Protest

If the agency denies the protest, the CO (or other authority as provided in agency regulations) notifies the protester and any other parties affected by the decision (e.g., awarding the contract to the originally intended successful bidder). The bidder (or interested party that filed the protest) may file a “subsequent” protest with the General Accounting Office (GAO). The filing must be done within 10 days after the bidder has been notified of, or has knowledge of, the adverse agency action. The procedural details for the subsequent protest procedures are set forth in Part 21.2(a)(3) of the GAO Bid Protest Regulations (4 CFR 21).

If the agency sustains the protest, promptly notify all affected parties and promptly take the indicated action. The decision notice shall conform to agency regulations. Include all factfinding documentation and a copy of the decision in the appropriate file.

FLOWCHART IN PROTESTING A SMALL BUSINESS REPRESENTATION*Exhibit 9-10. Flowchart in Protesting a Small Business Representation.*

PROTESTS

9.2 PROTESTING A SMALL BUSINESS REPRESENTATION

Sometimes all or part of a procurement is reserved for (or set-aside for) small business concerns only. Therefore, to be eligible for award, the bidder must represent that it is a small business in accordance with the size standard that applies to that procurement. With respect to a specific offer, the CO, any offeror, or any other interested party may protest that a bidder is not a small business.

FAR 19.301(d)

If there is actual misrepresentation of size status by a business concern for the purpose of obtaining an award, the SBA, or the contracting officer if SBA declines, may initiate penalty action.

9.2.1 Notify Parties of Proposed Awardee

FAR 19.302(d)

Protests must be filed on a timely basis. Protests must be received by the CO by the close of business of the fifth business day after bid opening. Note, however, that when contracting is by negotiation, the identity of the apparent successful offeror is not known by the interested parties. To overcome this situation, the CO is required to send a preaward notice to each unsuccessful offeror, on a small business set-aside, giving the name and location of the apparent successful offeror. Under this procedure, the five day time period is tabulated beginning the date of the receipt by the interested party of the notification.

9.2.2 Forward Protests or CO Concerns About an Offeror's Eligibility to SBA

The information below describes the handling of protests relating to the small business representation made by a bidder:

Nature of Protest: Any interested party may protest the small business representation of a bidder on a specific IFB. The protest shall contain detailed evidence to support the allegation that the bidder is not a small business. (Note: The CO may also question the representation.)

CO Actions: Promptly send the protest to the SBA Regional Office and withhold award until:

- SBA has made a size determination, or
- The expiration of 10 business days after SBA receipt of the protest. However, award shall not be withheld if the CO determines in writing that an award must be made to protect the public's interest.

After SBA notifies the CO of the decision concerning the protest, the CO will notify the protestor of SBA's decision.

SBA Actions: SBA will make the determination as to the small business status of the questioned bidder and will so notify the CO and the bidder.

9.2.2.1 Timeliness of Protest — Small Business Representation

At any time after bids are opened, the CO may question the small business representation of any bidder relative to a specific bid. Also, the CO must forward a protest, (whether received timely or not) that is submitted by an interested party to the SBA Regional Office for the geographical area where the principal office of the concern in question is located.

If, however, the protest is to affect a specific IFB, the protest must be submitted and processed in a timely manner:

- Protests by an interested party must be received by the CO by close of business on the fifth business day after bid opening
 - If made in writing, it must be delivered to the CO by hand, telegram, or letter postmarked within the five-day period.
 - If made orally, it must be confirmed in writing either within the five-day period or by letter postmarked no later than one day after the oral protest.
 - A CO's protest is always considered timely whether it is filed before or after award.

The SBA will communicate with the challenged offeror to obtain additional information and, within 10 business days after receiving the protest, make a size determination and so inform the CO and the bidder. An appeal procedure is prescribed at FAR 19.302(i).

9.2.3 Determine Whether to Award Immediately

The decision table below shows when the CO may make an award. The CO must notify SBA when award has been made under these circumstances.

PROTESTS

| DECISION TABLE FOR CO TO AWARD IMMEDIATELY | |
|--|------------------------|
| IF: | THEN CO: |
| Awarding is in the public's interest | Will award immediately |
| No SBA decision is rendered within 10 days | May award |

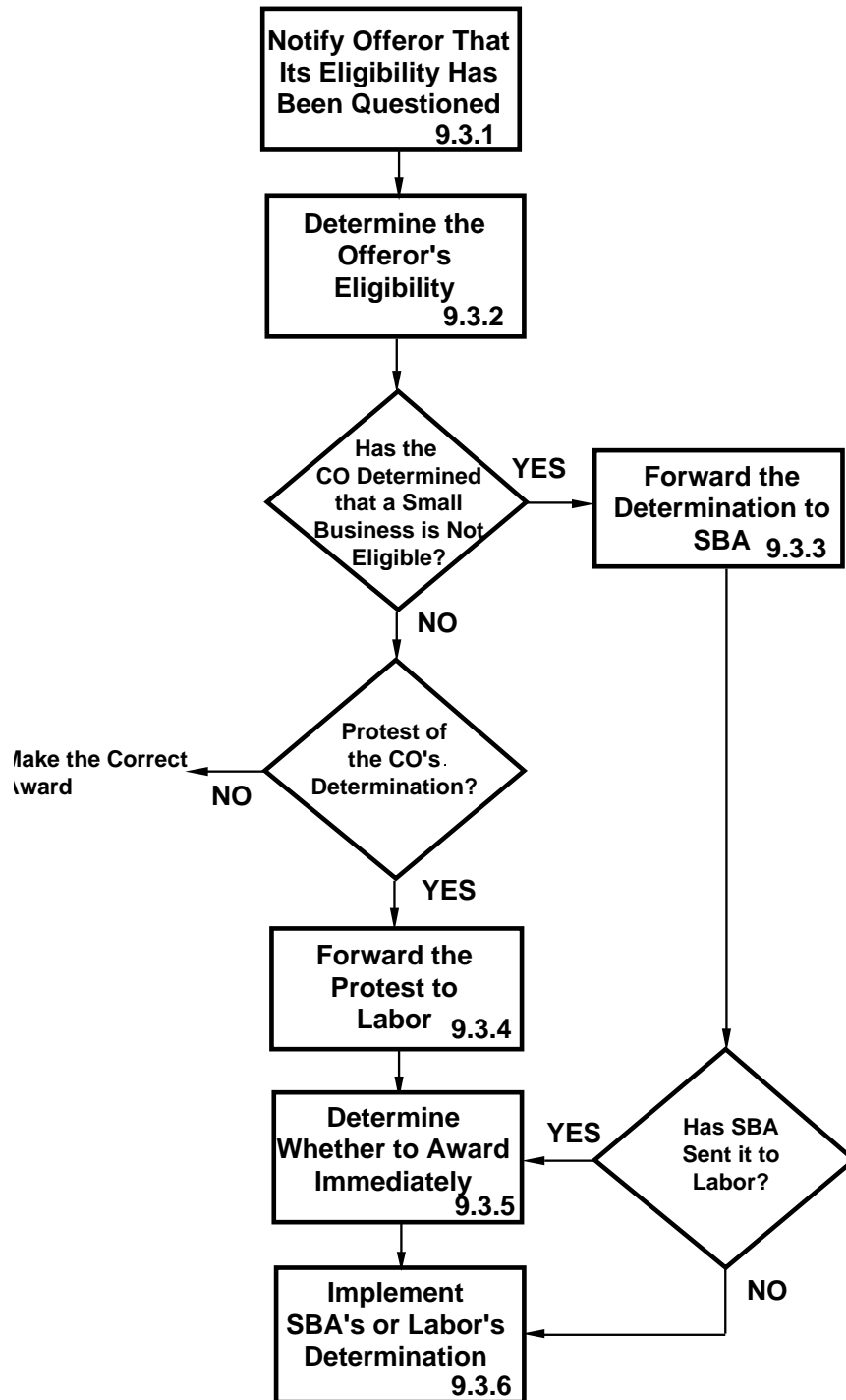
Exhibit 9-11. Decision Table for CO to Award Immediately.

9.2.4 Implement SBA's Determination

The decision table below describes the CO's actions based on SBA's determinations.

| DECISION TABLE FOR CO TO IMPLEMENT SBA's DETERMINATIONS | |
|---|--|
| IF SBA: | THEN CO: |
| Determines that the bidder is a small business | Awards contract to that bidder |
| Determines that bidder is not a small business | Awards contract to the next lowest, responsive, responsible bidder who is a small business concern |

Exhibit 9-12. Decision Table for CO to Implement SBA's Determinations.

FLOWCHART OF PROTESTS CONCERNING WALSH-HEALEY (Section 9.3)*Exhibit 9-13. Flowchart on Protests Concerning Walsh-Healey.*

PROTESTS

9.3 PROTESTS CONCERNING THE WALSH-HEALEY PUBLIC CONTRACTS ACT

Briefly stated, the Walsh-Healey Public Contracts Act pertains to minimum wages, hours, child labor, etc., and it applies to contracts over \$10,000 for the manufacture or furnishing of materials, supplies, articles, and equipment. To be eligible for award of such a contract, the bidder must represent that it is in fact a manufacturer or regular dealer in the materials, supplies, articles, and equipment (unless an exemption applies). The representation provision is one of the “reps and certs” that you include in the IFB. (See Chapter 7 for eligibility under Walsh-Healey.) The representation may be challenged by the CO or, it may be challenged by another offeror by the filing of a protest.

9.3.1 Notify Offeror That Its Eligibility Has Been Questioned

The CO should rely on the bidder’s representation that it is a manufacturer or regular dealer except in the following circumstances:

- He/she has knowledge that raises the question of the validity of the representation.
- A protest has been lodged by another offeror.
- The apparently successful bidder has not previously been awarded a contract subject to the Walsh-Healey Act by the particular acquisition office (contracting activity).
- A preaward survey of the bidder’s operations is otherwise being made to determine the technical and production capability, plant facilities and equipment, and subcontracting and labor resources of the bidder

If a bidder is not a manufacturer or regular dealer (if the Walsh-Healey Act is applicable), or if the bidder in any way qualifies its full compliance with the Act, the CO shall reject bid.

If the CO has reason to question or challenge the bidder’s representation that it is a manufacturer or regular dealer, the CO will request additional information from the bidder to make a determination of eligibility. If the eligibility of the bidder is challenged by a protest from another bidder, the CO will promptly notify the apparently successful low bidder of the protest.

In either of the above cases, it might be appropriate to notify bidders whose bids might become eligible for award to extend their dates for bid acceptance.

9.3.2 Determine the Offeror's Eligibility

After a review of all factual evidence, if the CO determines that the bidder in question is not eligible, and the bidder is a small business, the CO shall refer the case to the SBA (see Section 9.3.3).

If the CO determines, after a review of all factual evidence, that the bidder in question is not eligible, and the bidder is not a small business, the CO shall refer the case to the Department of Labor (DOL) (see Section 9.3.4).

The foregoing two situations are covered at FAR 22.608-2(b), i.e., the CO questions the bidder's representation. FAR 22.608-3 provides guidance to be followed if another bidder challenges the eligibility of the apparently successful bidder. The procedures are essentially the same, but you should, as always, refer to the FAR for specific guidance.

9.3.3 Forward the Determination to SBA

The CO sends the determination to SBA even if the bidder does not protest the determination. The SBA may:

- Reverse the determination and forward a certification of the bidder's eligibility to the CO, or
- Forward the case to the DOL for a final determination, if it agrees with the CO.

PROTESTS

9.3.4 Forward the Protest to DOL

After making a determination, the CO shall first notify the bidder in writing:

- That he/she is not eligible,
- The reasons for the ineligibility determination, and
- That he/she may protest the determination by submitting supporting evidence to the CO within 10 working days.

If the CO's position has not changed as a result of reviewing the evidence, the bidder's protest and all pertinent material shall be sent to the DOL for a final decision, in accordance with agency procedures.

9.3.5 Determine Whether to Award Immediately

Generally, award should not be made while waiting a final determination by the DOL or SBA. However, award may be made if the CO certifies, and the certification is approved as required by agency regulations, that:

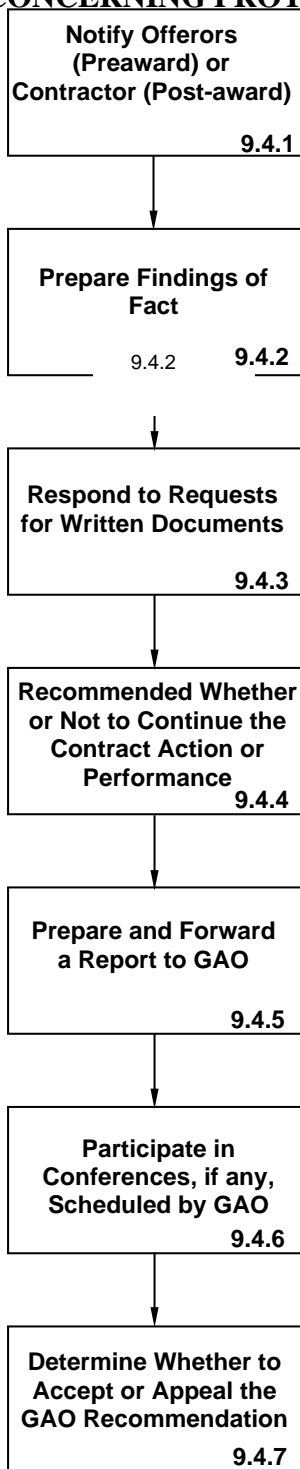
- The items are urgently required, or
- Delay in making the award will result in a substantial hardship for the Government.

If a decision is made to award before a final determination by the DOL or SBA, fully document the reasons for making the award and so notify the DOL or SBA and the protestor.

9.3.6 Implement SBA's or DOL's Determination

The CO shall make the appropriate award(s), depending on the decisions that have been made, unless award has already been made as noted in 9.3.5 above.

Any bidders previously notified of the protest should be notified of the final award decision. All actions should be fully documented in the appropriate contracting office files.

FLOWCHART CONCERNING PROTESTS TO GAO (Section 9.4)*Exhibit 9-14. Flowchart Concerning Protests to GAO.*

PROTESTS

9.4 PROTESTS TO GAO

The GAO is authorized, by statute, to render decisions on protests filed with it by any interested party. The decisions are made by or for the head of the GAO (the Comptroller General of the United States), and they are referred to as Comptroller General decisions.

Comptroller General decisions are final and, essentially, binding on the agency involved. If the decision goes against the party that filed the protest, it is referred to as “denied.” If the decision is in favor of the party that filed the protest, it is referred to as “sustained.” The Comptroller General is also authorized to declare that an appropriate interested party shall be entitled to the costs of:

- Filing and pursuing the protest, including reasonable attorney’s fees, and
- Bid and proposal preparation.

The Comptroller General usually declares such entitlement when the decision corrects an inappropriate award or, in some cases, when the decision recognizes that the interested party was harmed by the agency’s action or inaction during the procurement.

FAR Subpart 33.104 prescribes the procedures you are to follow relative to protests. The interested party filing a protest is governed also by GAO protest regulations at 4 CFR Part 21.

GAO published a book entitled “Bid Protest Procedures.” This book sets forth in great detail what GAO requires of protestors and Government agencies, when they process a bid protest. Many protests are rejected because they are not filed in time. Government agencies that neglect to follow GAO requirements (e.g., timely submission of reports) are apt to have difficulty getting their actions sustained.

Many of the procedures to be followed in GAO protests are similar for both preaward and post-award protests. A protestor shall furnish a copy of a complete protest to the official at the location designated in the IFB (or, in the absence of such a designation, to the CO) no later than one day after the protest is filed with the GAO. Failure to file a complete copy of the protest within one day may result in dismissal of the protest by GAO.

Protests based on alleged improprieties in an IFB that are apparent prior to bid opening must be filed prior to bid opening. In other cases, protests must be filed no later than 10 days after the basis for the protest is known, or should have been known. If a bidder initially submits a protest to the CO, any subsequent protest to the Comptroller General must be filed within 10 days after initial adverse action taken by the agency, no matter how they heard, e.g., receipt of formal notification or actual or constructive knowledge.

To ensure that an interested party's protest to GAO is not considered "late," the protester may file the protest with the CO and GAO at the same time. Note, however, that GAO has reserved the right to consider "untimely protests" if it so wishes.

9.4.1 Notify Offerors (Preaward) or Contractor (Post-award)

The CO shall give notice of the protest and its basis to bidders and other interested parties involved in or affected by the protest. They should be notified within one work day after the receipt of the protest by the agency. If the award has been made, give the contractor immediate notice of the protest. If no award has been made, notify all parties who appear to have a reasonable prospect of receiving an award should the protest be sustained.

When a protest against making an award is received and award is withheld pending disposition of the protest, the bidders whose bids might become eligible for award should be informed of the protest. If appropriate, those bidders should be requested, before expiration of their bid, to extend the time for acceptance. If such extensions cannot be obtained, consider proceeding using the procedure shown in Exhibit 9-15.

9.4.2 Prepare Findings of Fact

For the CO, the most important step in responding to a protest is factfinding. Follow the instructions in Section 9.1.2 to perform this step.

PROTESTS

9.4.3 Respond to Requests for Written Documents

Protestors may request certain Government documents and the agency shall furnish:

- Copies of those requested documents in addition to the documents described in FAR 33.104(a)(6), and
- A copy of the agency report that was filed with GAO.

These documents are usually furnished, unless the protestor is not authorized by law to receive the requested document or the documents:

- Are not relevant to the protest;
- Would give the protestor a competitive advantage; or
- Have previously been provided to the protestor.
- Are covered under a protective order issued by GAO

9.4.4 Recommend Whether or Not to Continue the Contract Action or Performance

When an agency receives notice that a protest was filed directly with GAO, the CO shall not award a contract unless authorized to do so. Such authorization to award may be made upon a written finding by the head of the contracting activity, on a non-delegable basis. See Exhibit 9-15.

AWARDING CONTRACTS WITH PROTESTS PENDING

FAR 33.104-(a)(7)(b)

A contract may be awarded pending a protest if the head of the contracting activity finds that:

- There are urgent and compelling circumstances that significantly affect the interest of the United States; and
- Award is likely to occur within 30 calendar days of the written finding.

Exhibit 9-15. Awarding Contracts With Protests Pending.

Contract award shall not be made until the agency has notified GAO of the above finding.

If the agency receives notice that a protest was filed directly with GAO within 10 calendar days after award, the CO shall immediately suspend performance or terminate the awarded contract, unless:

- In accordance with agency procedures, the head of the contracting activity may, on a nondelegable basis, authorize contract performance, notwithstanding the protest, upon a written finding that:
 - Contract performance will be in the best interests of the United States; or
 - Urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for GAO's decision, and
- The agency has notified GAO of the above finding.

If the CO decides to suspend performance or terminate the awarded contract, he/she should attempt to negotiate an agreement with the contractor that such action will be on a no-cost basis to the Government.

If the agency receives notice that a protest was filed directly with GAO more than 10 calendar days after award, the CO need not suspend contract performance or terminate the awarded contract. However, if the CO believes that the award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Government's interest, he/she should suspend contract performance or terminate the contract.

PROTESTS

9.4.5 Prepare and Forward a Report to GAO

When a protest, either before or after award, has been filed with the GAO, the agency shall prepare a report to be submitted to the GAO. You, the CO, legal counsel, and others may be involved in preparing the report.

The purpose of the report is to provide the GAO with the agency's description of events (including appropriate documentation) pertaining to the particular procurement. The report must be accurate and complete because it is the major source of information used by the GAO in evaluating the agency's handling of the procurement. The report must also be prepared and submitted to the GAO on a timely basis, i.e., within:

- 25 calendar days after receipt from the GAO of telephonic notice of the protest or,
- 10 calendar days after receipt of notice from the GAO of a determination to use the express option. The express option is an accelerated procedure that may be used to settle a protest if there is a bona fide need for an expeditious decision. The protester, the agency, or an interested party may request the express option.

A report is not required during these time frames if:

- The protest has been dismissed by GAO, or;
- The agency obtains a new date exceeding the time frame from the GAO

FAR 33.104(a)(2)

Briefly, the report shall include a copy of:

- The protest,
- The offer submitted by the protesting offeror,
- A copy of the offer that is being considered for award or that is being protested,
- The solicitation, including portions of the specifications relevant to the protest,
- The abstract of offers or relevant portions,
- Other relevant documents. and
- The CO's signed statement setting forth findings, actions, recommendations, and other evidence that bears on the validity of the protest.
- A copy of the determination to continue the procurement or contract performance.

FAR 33.104 (a)(6)

The copy of the report that is sent to GAO identifies all parties who are being furnished copies of the report. Note that the CO may withhold classified or sensitive information from reports sent to other parties. A list of all documents withheld from the interested parties must be included in the report to GAO.

9.4.6 Participate in Conferences Scheduled By GAO

Upon request by the agency, protester or other interested party GAO may decide to hold a hearing on the merits of the protest. Its purpose is to resolve specific factual disputes essential to the resolution of the protest which cannot otherwise be resolved from the record. As a part of this conference, you, the CO and/or other agency officials might be called to testify under oath, with either party allowed to question each such witness. Transcripts of the testimony are made a part of the proceeding, and your agency will have three days after receipt of the transcript to submit written comments on it. If you are called upon to testify, be sure to thoroughly review the particulars of the case and have relevant documents available for reference.

9.4.7 Determine Whether to Accept or Appeal the GAO Recommendation

GAO will issue its recommendation on a protest (including award of bid protest costs and attorney fees) within 90 calendar days, or within 45 calendar days under the express option, unless GAO establishes a longer period of time.

- If GAO denies the protest, the CO's position is upheld. Any delayed award can be made or any suspended contract can proceed.
- If GAO sustains the protest, GAO may recommend a course of action or may order the agency to refrain from acting in a similar manner in the future. GAO may also award protest costs.

The head of the agency or a designee responsible for the IFB, proposed award or award of the contract shall report to the Comptroller General within 60 days of receipt of the GAO's recommendation if the agency has decided not to comply with the recommendation. The report shall explain the reasons why GAO's recommendation will not be followed by the agency.

PROTESTS

NOTES

9.5 PROTESTS TO THE GSBCA AND TO THE COURTS

9.5.1 Protests to the General Services Board of Contract Appeals (GSBCA)

An interested party may protest certain types of ADP acquisitions to GSBCA as provided in Section III of the Federal Property and Administrative Services Act (40 U.S.C. 795). A protest that is filed with the GAO, however, cannot later be filed with the GSBCA. ADP acquisition protests that are not covered under this statute cannot be heard by the GSBCA. However, they may be heard by the agency, the courts, or GAO.

FAR 33.105 sets forth detailed procedures pertaining to protests filed with the GSBCA. The GSBCA has also published its Rules of Procedure at 4 CFR Part 21. In general, the procedures for filing protests with the GSBCA are similar to those applicable to a civil suit in a U.S. District Court.

When a GSBCA protest is filed, you should promptly bring it to the attention of the CO, who will then work closely with legal counsel to provide GSBCA with a “protest file.” This is similar to the agency report that is required to be filed with GAO on a GAO bid protest case.

You may be asked to furnish a detailed Statement of Facts in the case of either a GAO or a GSBCA protest. This is a simple outline of the procurement events that occurred in the sealed bid process. The statement is usually organized chronologically from the receipt of the procurement request to the award of the contract. The statement will show dates, how many bids were received, and all the essential “facts,” so that the reviewing authority can make a determination to deny or sustain the protest.

9.5.2 Legal Remedies

Nothing in the protest procedures discussed in this chapter prevents an interested party from pursuing its rights through the U.S. District Courts or the U.S. Claims Court. For example, before or after award, the protesting bidder can ask the court to enjoin the award of the contract or to set-aside a contract already awarded.

PROTESTS

If any such action, including injunctive action, arises under a procurement with which you are involved, you, the CO, counsel, and other agency officials will be required to review appropriate case documentation, prepare reports, provide testimony, and take other direct or indirect action to support the Government's case.

THE LAST WORD ON PROTESTS A REVIEW OF THE VIGNETTE

Going back to the protest that was discussed at the beginning of this chapter, you have learned how to handle a protest. First, you try to respond effectively to Mr. Jones' complaint. Seek advice from the CO and review the facts. If errors were made, divulge them now.

Suppose that after a thorough review, and with counsel concurring, you did not make any significant errors. You and the CO might meet with Mr. Jones to discuss the complaint. You should be as sensitive to Mr. Jones' feelings as you can. The company may have spent a great deal of money preparing the bid and may need the contract badly. In addition, the company may feel that it has a legitimate complaint.

The CO will tell Mr. Jones the "facts" as concisely as possible and give him a chance to talk—it may be all he wants to do. Do everything to assure him that there was no favoritism, that the specifications were carefully prepared, and that he got the same treatment as anyone else. Ace Electronics got the contract because it was the low, responsive, responsible bidder. Under sealed bidding regulations, it should have received the award. That's a tough argument to fight!! If, however, Jones is not satisfied and does file a protest, immediately take the appropriate action depending on who received the protest.

Exhibit 9-16. Review of Vignette.

APPENDIX A—CONTRACT CLAUSE EXAMPLES

INTRODUCTION

This appendix discusses six contract clauses that are used in sealed bidding. In FAR, there is a FAR text reference that tells you when a particular contract clause is to be used. This text reference states a contract clause number that sets forth in full the contract clause.

For example, FAR 2.201 states that contract clause 52.202-1 shall appear in all solicitations and contracts except for two minor exceptions that do not apply to IFBs.

In FAR Subpart 52.3 a series of solicitation provision and contract clause matrices are set forth that tell you which clauses are required and those that are required when applicable. These matrices also tell you what section of the UCF they are to be placed in, and whether they are to be incorporated by reference or set forth in full text in the IFB or contract.

Example #1

FAR authority for use of clauses

FAR 2.201

This reference tell you when the contract clause is to be used.

FAR clause citation

This reference spells out the contract clause that is to be used.

Description of clause

The clause sets forth definitions of key terms that are used in the contract.

Applicability of clause

This is a required contract clause that is to be used in all IFBs and contracts. You should place it in Section I of the UCF and it is incorporated by reference (FAR Subpart 52.3).

CONTRACT CLAUSE EXAMPLES

Purpose of clause

The clause sets forth basic definitions that apply to the contract. Such terms as “head of agency” and “contracting officer” are defined in detail so as to alert the contractor, for example, the contracting officer is the person who has the authority to enter into contracts.

Contracting officer action

Place this contract clause in all IFBs and contracts.

Example #2

FAR authority for use of clause

FAR 3.404(c)

This reference tells you when this clause is to be used.

FAR clause citation

FAR 52.203-5, Covenant Against Contingent Fees

This reference spells out the contract clause that is to be used.

Description of clause

This clause states that the contractor warrants that no person or agency has been employed or retained to solicit or obtain the contract upon an agreement or understanding for a contingent fee, except a bonafide employee or agency.

Breach of this warranty, the Government has the right to annul the contract.

Key terms of the clause such as “contingent fee” and “bona fide employee” are defined so that you will be able to decide whether the contractor entered into an agreement to utilize a contingent fee arrangement.

Applicability of clause

This is a required clause that is to be included in all IFBs and contracts. You should place it in Section I of the UCF and it is incorporated by reference (FAR Subpart 52.3).

Purpose of clause

The clause is designed to eliminate the use of persons or agencies that exert or propose to exert improper influence to solicit or obtain a Government contract and will be paid a fee contingent on their success.

Contracting officer action

The contracting officer should place this clause in all IFBs and contracts. Normally, in IFBs, no further action by the contracting officer should be required since the contractor is not asked to submit any statement on a possible contingency fee arrangement. When it submits its bid, it warrants that it has no contingent fee arrangement.

CONTRACT CLAUSE EXAMPLES

Example #3

FAR authority for use of clause

FAR 3.503-2

This reference tells you when this clause is to be used.

FAR clause citation

FAR 52.203-6, Restrictions on Subcontractor Sales to the Government.

Description of clause

This clause states that the contractor shall not enter into any agreement with a subcontractor which has or may have the effect of restricting sales by such subcontractor directly to the Government for any item that the subcontractor is furnishing to the prime on the contract.

The clause requires the prime contractor to incorporate the substance of the clause in all subcontracts under the contract.

Applicability of clause

This is a required clause that is to be included in all IFBs and contracts. You should place it in Section I of the UCF and it is incorporated by reference (FAR Subpart 52.3).

Purpose of clause

The clause is designed to eliminate agreements that some prime contractors had with subcontractors that precluded the subcontractors from selling those items directly to the Government.

Contracting officer action

The contracting officer should place this clause in all IFBs and contracts.

Example #4*FAR authority for use of clause*

FAR 33.106 (b)

This reference tell you when this clause is to be used.

FAR clause citation

FAR 52.233-3, Protest After Award

Description of clause

This clause states that upon receipt of a protest after contract award, the contracting officer may direct the contractor to stop work on the contract.

Upon receipt of a final decision on the protest, the contracting officer may cancel the stop work order or terminate the contract as provided by the termination for convenience or default under the terms of the contract.

Applicability of clause

This is a required clause that is to be included in all IFBs and contracts. You should place it in Section I of the UCF and it is incorporated by reference (FAR Subpart 52.3).

Purpose of clause

The clause is designed to give the contracting officer authority to stop work on a contract when a protest is received after award. The contracting officer may feel that the protestor has a good chance of winning the protest. By issuing a stop-work order, the contracting officer is minimizing the costs that may have to be paid if the original contract is terminated because the protestor wins its protest.

Contracting officer action

The contracting officer should place this clause in all IFBs and contracts. If a protest is received after award, he/she should consider the desirability of issuing a stop-work order on the contract after considering the urgency of the needs for the supplies and whether the protestor is likely to win its protest.

Example #5

CONTRACT CLAUSE EXAMPLES

FAR authority for use of clause

FAR 43.205(a)(1)

This reference tells you when this clause is to be used.

FAR clause citation

FAR 52.243-1, Changes-Fixed Price

Description of clause

This clause gives authority to the contracting officer to make changes within the general scope of the contract in any of the following:

- Drawings, designs, or specifications
- Method of shipment or packing
- Place of delivery

If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the contract, the contracting officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

Applicability of clause

This is a required clause that is to be included in all IFBs and contracts. You shall place it in Section I of the UCF and it is incorporated by reference (FAR Subpart 52.3).

Purpose of clause

The clause is designed to permit the contracting office to make certain changes, within the general scope of the contract, that are often necessary in contract administration. If delivery dates have to be changed or a specification has to be amended, the changes clause is available to issue the changes. After issuance, the contract can then negotiate with the contracting officer if any cost increases occurred, and an equitable adjustment can be made to the contract.

Contracting officer action

The contracting officer should place this clause in all IFBs and contracts.

Example #6

APPENDIX A

FAR authority for use of clause

FAR 3.102-2

This reference tells you when this clause is to be used.

FAR clause citation

FAR 52.203-1, Official Not To Benefit

Description of clause

The clause states that no member of or delegate to Congress, or resident commissioner, shall benefit from the contract.

Applicability of clause

This is a clause that is to be included in all IFBs and contracts, except those related to agriculture that are exempted by 41 U.S.C. 22.

Purpose of clause

This clause is designed to require that no member of Congress shall be admitted to any share or part of the contract or any benefit arising from it.

Both the officer or employee of the Government who awarded the contract and the member of Congress are subject to criminal penalties (FAR 3.102-1).

Contracting officer action

The contracting officer shall place this clause in all IFBs and contracts. He/she should ensure that no benefits from the contract flow to the members of Congress as set forth in the clause.

APPENDIX B

TWO-STEP SEALED BIDDING

| | |
|--|---|
| Description | Two-step sealed bidding is a combination of competitive procedures designed to obtain the benefits of sealed bedding when adequate specifications are <i>not</i> available. |
| Purpose | Step one is similar to the negotiation method of contracting in that it permits the evaluation and discussion of technical proposals. Step two utilizes sealed bidding procedures in order to utilize the disciplined pricing aspects of that method of contracting. |
| Conditions for the Uses of Two-Step | <p>Sealed bidding is an effective means of requiring supplies and services. One of the conditions for the use of sealed bidding is the availability of firm specifications (a detailed presentation of specifications was provided in the Procurement Planning course). If such specifications are not available, they may be obtained by use of the two-step procedure. Two-step sealed bidding permits the development (under contract) of a sufficiently descriptive and not unduly restrictive statement of the Government's requirements. This includes an adequate technical data package, so that subsequent acquisitions can be made using conventional sealed bidding procedures.</p> <p>Unless other factors require the use of sealed bidding, two-step sealed bidding may be used in preference to negotiation only when <i>ALL</i> of the following conditions are present:</p> <ul style="list-style-type: none">• Available specifications or purchase descriptions are <i>not</i> definite or complete or they might be too complex or restrictive. But, in either case, discussion between the Government and each source are necessary in order to ensure a mutual understanding of the technical aspects of the requirement.• Definite criteria exist for evaluating technical proposals, such as design, manufacturing, testing and performance requirements, and special requirements for operational suitability and ease of maintenance.• More than one technically qualified source is expected to respond to the solicitation. |

TWO-STEP SEALED BIDDING

Conditions for the Use of Two-Step (continued)

- There is sufficient time to use two-step procedures. The use of two-step procedures normally requires more time than either the conventional sealed bidding or the negotiation methods of contracting.
- A firm-fixed-price contract or a fixed-price contract with economic price adjustment will be used.

Two-step sealed bidding may include any or all of the following features:

- Multi-year contracting.
- Government-owned facilities or special tooling (or both) is to be made available to the successful bidder.
- The procurement will be made under a total small business and/or labor surplus area set-aside.
- A first or subsequent production quantity is being acquired under a performance specification.

| |
|------------------------|
| FAR 19.502-2 20.201 |
|------------------------|

Step One—Request for Technical Proposals Receipt of Technical

Requests for technical proposals shall be distributed in accordance with FAR 14.203-1 (solicitation mailing lists and other methods of dissemination of information). In addition, requests shall be synopsisized for publication in the CBD in accordance with FAR Part 5. The request for technical proposals is generally in the form of a letter. However, you should consult your agency's regulations to determine the preferred format for the request. The request must include, as a minimum, the following:

- A description of the supplies or services required.
- A statement of intent to use the two step method.
- The requirements of the technical proposal.
- The criteria to be used for evaluating the technical proposals.
- A statement that the technical proposals shall *not* include prices or pricing information.

FAR 14.201-6(r)

- The date, or date and hour, by which the proposal must be received.
- A statement that in the second step, only bids based upon technical proposals determined to be acceptable, either initially or as a result of discussions, will be considered for awards. It will also state that each bid in the second step must be based on the bidder's own technical proposal.
- A statement that offerors would submit proposals that are acceptable without additional explanation or information.
- A statement that the Government may make a final determination regarding a proposal's acceptability solely on the basis of the proposal as submitted. It must further state that the Government may proceed with the second step without requesting further information from any offeror. However, the Government may request additional information from offerors of proposals that it considers reasonably susceptible of being made acceptable, and may discuss proposals with their offerors.
- A statement that a notice of unacceptability will be forwarded to the offeror upon completion of the proposal evaluation and final determination of unacceptability.
- A statement either that only one technical proposal may be submitted by each offeror, or that multiple technical proposals may be submitted. When specifications permit different technical approaches, it is generally in the Government's interest to authorize multiple proposals. If multiple proposals are authorized.

FAR 14.201-6(s)

Information on delivery or performance requirements may be of assistance to bidders in determining whether or not to submit a proposal and may be included in the request. The request shall also indicate that the information is *not* binding on the Government and that the actual delivery or performance requirements will be contained in the invitation issued under step two.

TWO-STEP SEALED BIDDING

Processing Proposals

Upon receipt of the technical proposals, the CO shall:

- Safeguard proposals against disclosure to unauthorized persons.
- Accept and handle data marked in accordance with FAR 15.413. (Disclosure and use of information before award.)
- Remove any reference to price or cost that may have been included in the technical proposal.
- Establish a time period for evaluating technical proposals. The period may vary with the complexity and number of proposals involved. However, the evaluation should be completed quickly.
- If a technical proposal is received late, either initially or as the result of a request for clarifying or supplementing information, it shall be considered only as provided for at FAR 15.412 (late proposals and modifications).

Evaluations

Technical evaluations of proposals shall be based on the criteria outlined in the request for proposals. However, the evaluation will not include a review of the prospective contractors to determine if the general standards for responsibility defined in FAR Subpart 9.1 are met. Proposals shall be categorized as either:

- Acceptable.
- Reasonably susceptible of being made acceptable.
- Unacceptable.

Acceptable Proposals

After evaluating all technical proposals, the CO may proceed directly with step two if:

- There are enough acceptable proposals to ensure adequate price competition under step two; and
- If further time, effort and delay to make additional proposals acceptable (thereby increasing competition would not be in the Government's interest.)

If there are not enough acceptable proposals, the CO shall request bidders whose proposals may be made acceptable to submit additional clarifying or supplementing information. The CO shall identify the nature of the deficiencies in the proposal or the nature of the additional information required. The CO may also arrange discussions for this purpose. No proposal shall be discussed with any offeror other than the submitter.

In initiating requests for additional information, the CO shall fix an appropriate time for bidders to:

Reasonably Susceptible to Being Made Acceptable

- Conclude discussions, if any;
- Submit all additional information; and

Unacceptable

- Incorporate such additional information as part of their proposals submitted.

The time allotted may be extended at the discretion of the CO. If the information added to the proposal within the final time fixed by the CO makes the proposal acceptable, it shall be so categorized. Otherwise, it shall be categorized as unacceptable.

Any proposal which modifies, or fails to conform to the essential requirements or specifications of the request for technical proposals shall be considered nonresponsive and categorized as unacceptable.

When a technical proposal is found to be unacceptable (either initially or after clarification), the CO shall promptly notify the offeror of the basis of the determination and that a revision of the proposal will not be considered. Upon written request and as soon as possible after award, the CO shall debrief unsuccessful offerors.

TWO-STEP SEALED BIDDING

Step Two—The Bid

When the technical evaluation for step one has been completed, step two shall be conducted in accordance with the appropriate sections of FAR Part 14 *except* that IFBs shall:

- Be issued only to those offerors submitting acceptable technical proposals in step one;
- Include the provision prescribed in FAR 14.201-6(t) (Step Two of Two-Step Sealed Bidding);
- Prominently state that the bidder shall comply with the specifications and the bidder's technical proposal; and
- Not be synopsisized in the Commercial Business Daily (CBD) as an acquisition opportunity nor publicly posted.

FAR 5.101(a)

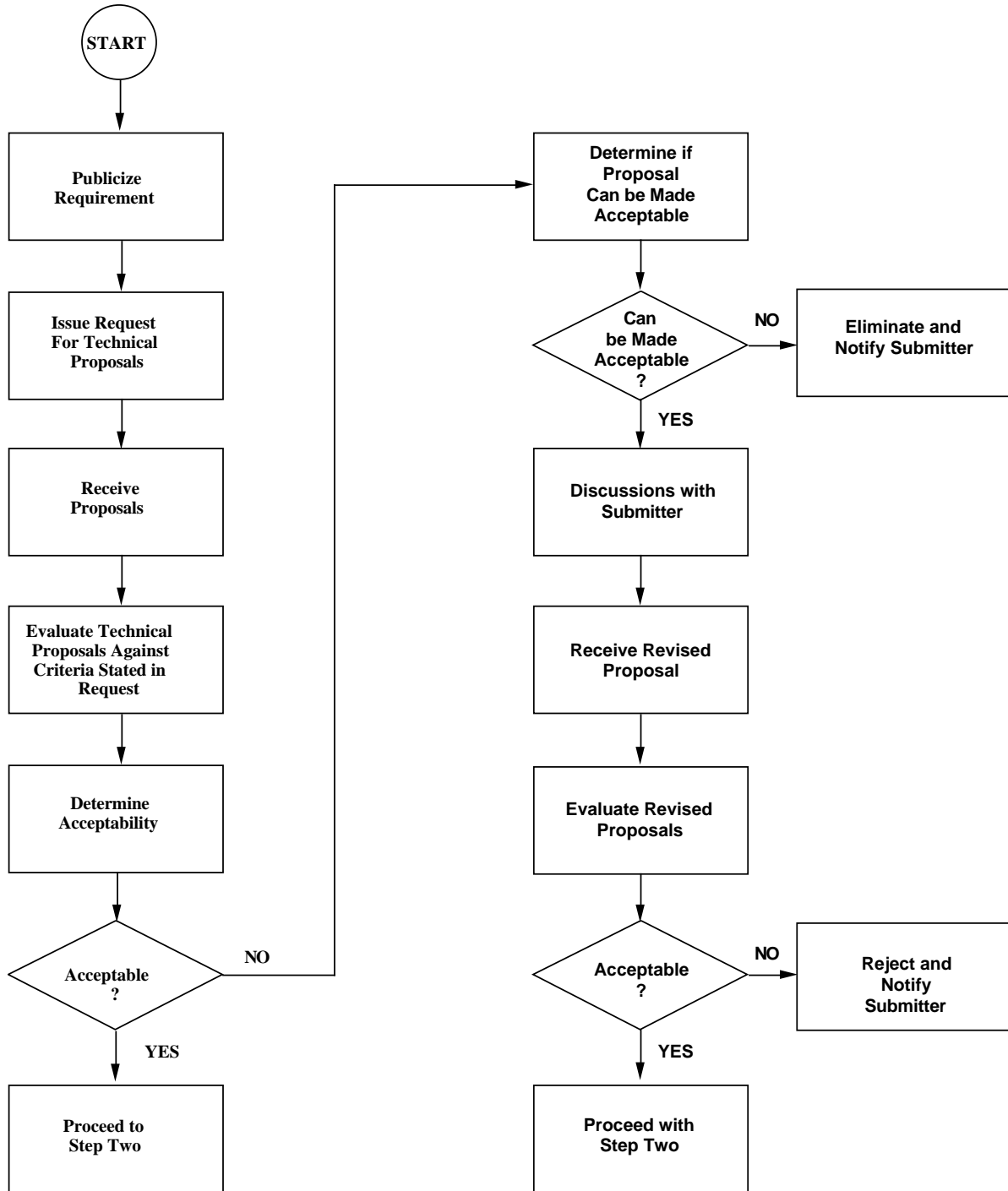
The names of firms that submitted acceptable proposals in step one will be listed in the CBD for the benefit of prospective subcontractors.

FAR 5.206(a)(2)

Discontinuance

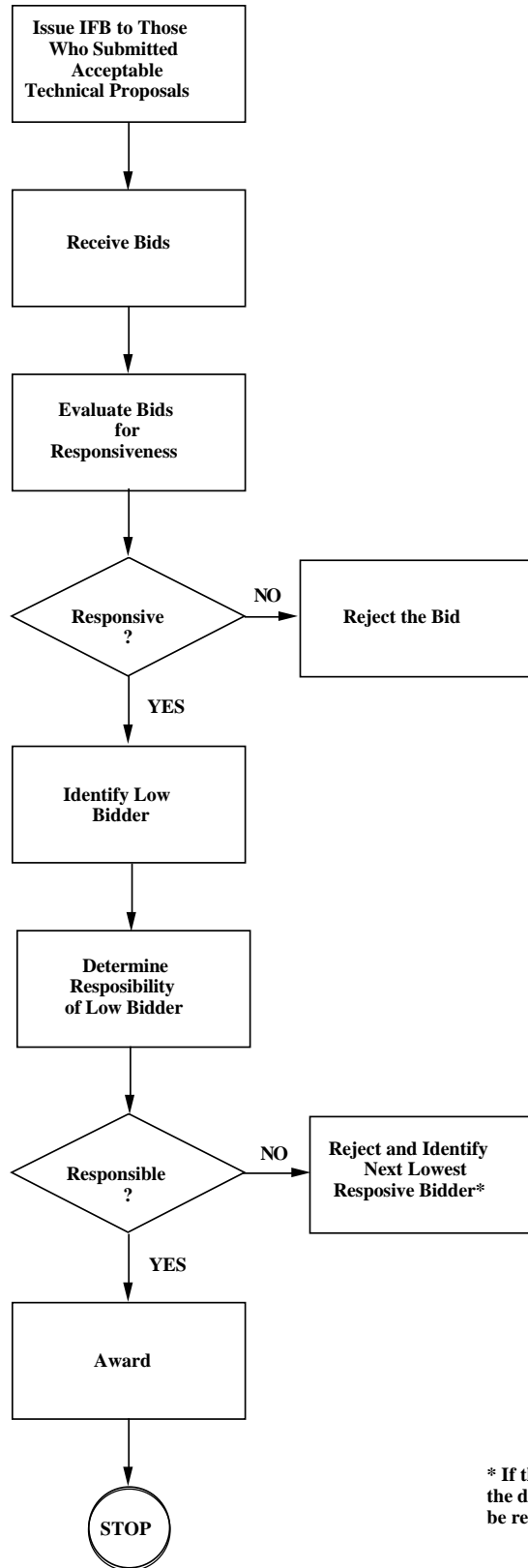
If it is necessary to discontinue two-step sealed bidding, the CO shall include a statement of the facts and circumstances in the contract file. Each offeror shall be notified in writing. When step one results in no acceptable technical proposals or only one acceptable technical proposal, the acquisition may be continued by negotiation.

Summary of Two-Step Sealed Bidding



TWO-STEP SEALED BIDDING

Summary of Two-Step Sealed Bidding



* If the rejected bidder is a small business, the decision as to non-responsibility must be referred to the SBA for resolution.

APPENDIX C

GLOSSARY

Abstract of Offers (Chapter 5)—As bids are opened and read, it is necessary to record certain information relative to each bid opened. The information is recorded in summary (thus abstract) form on Standard Form 1409, Abstract of Offers, or on Standard Form 1419, Abstract of Offers—Construction.

“All or None” Bid (Chapter 5)—A condition a bidder may add to a bid that award will be accepted only on all, or a specified group, of the items.

Amendment (Chapter 4)—When used in connection with an IFB, “amendment” means a formal change (correction, addition, deletion) to any information contained in the IFB (or previous amendments to the IFB). The amendment becomes a part of the IFB and any resulting contract can only be used before bid opening.

Bid Samples (Chapter 2)—Furnished by the bidder to show characteristics of the product offered in the bid. Bidders are required to submit bid samples only if the characteristic of the product cannot be adequately described in a specification or purchase description.

Bilateral Form (Chapter 8)—The SF 26, Award/contract, is used if a bid has been changed/corrected or the bidder amends, in writing, his/her bid. Because the SF 33, the cover sheet of the IFB, has already been signed, the SF 26 represents a new offer, and as such, accomplished by a new bilateral form (bilateral meaning two party signature) for the offer and acceptance (if any) to take place. (See also Chapter 2)

Brand Name or Equal (Chapter 2)—A “brand-name” purchase description identifies a product by its brand name and model or part number. Adding the words “or equal” means that the product of another manufacturer or producer is acceptable provided the product meets any specified key characteristics of the brand name. When using the term “brand name or equal” as a purchase description, the product so specified becomes the specification for that product.

Buy American Act (Chapter 5)—A federal statute applicable to Government contracts. The Act gives preference to domestic products over foreign products.

“Buy-in” Bids (Chapter 7)—Bid in which the price bid is so low as to appear to be unprofitable or that could result in a loss to the bidder.

Cancelling a Solicitation (Chapter 4)—Under certain circumstances, it may be appropriate to cancel an IFB and any amendments thereto. An IFB can be cancelled either before or after bid opening.

Certificate of Competency (COC) (Chapter 7)—A certificate issued by the Small Business

GLOSSARY

Administration (SBA) stating that the holder (small business firm) is responsible for the purpose of receiving and performing a specific Government contract.

Commerce Business Daily (Chapter 3)—CBD is a publication of the U.S. Department of Commerce in which agencies are required to announce certain proposed contract actions (IFBs and RFPs) and contract awards.

Contract Action (Chapter 2)—An action resulting in a contract. It includes contract modifications if such modifications are for additional supplies or services.

Contract Clauses (Chapter 2)—A term or condition used in contracts or in both solicitations and contracts, and applying after contract award or both before and after contract award.

Contract Distribution (Chapter 8)—Once entered into, copies of contracts must be distributed in accordance with the distribution requirements of the FAR and your agency's regulations.

Definite-Quantity (Chapter 2)—When used with reference to indefinite-delivery contracts, "definite-quantity" means that the contract requires the delivery of a definite quantity of specific supplies or services for a fixed period, with deliveries to be scheduled at designated locations upon order.

Descriptive Literature (Chapter 2)—Information such as cuts, illustrations, drawings, and brochures, that shows the characteristics or construction of a product or explains its operation. Bidders may be required to submit descriptive literature with their bids.

Deviation (Chapter 2)—When used relative to the FAR, deviation means the issuance or use of a policy, procedure, solicitation provision, contract clause, method, or practice of conducting an acquisition action of any kind that is inconsistent with the FAR.

Economic Price Adjustment (Chapter 5)—A condition that may apply to a fixed-price contract if it includes the Economic Price Adjustment (EPA) clause. The clause provides for a limited adjustment to the fixed price in the event certain market changes, beyond the control of the contractor, occur during the life of the contract.

Factfinding (Chapter 3)—Prospective bidders often make inquiries relative to some aspect of an IFB. If the inquiry pertains to other than readily available general information, it may be necessary to obtain specific information by communication with technical or other personnel in order to determine the appropriate response to the inquiry. This effort might be referred to as factfinding.

Fair and Reasonable Price (Chapter 5)—The CO will not award a contract unless he/she believes that the price is fair and reasonable. Generally, a price is considered fair and reasonable when two or more bidders submit responsive bids; the bid prices were arrived at independently; and the CO determines that adequate price competition was obtained. There are several price analysis techniques that may be used in making a decision, if necessary.

FAR 52.3 (Chapter 2)—FAR Subpart 52.3 contains “Provision and Clause Matrices.” The matrices are organized by type of contract and indicate the required, required when applicable, and optional clauses that apply to each type of contract.

Firm-Bid Rule (Chapter 5)—This rule states that bids may not be withdrawn by the bidder after the time set for bid opening. After bid opening, the Government may accept it and bind the bidder to a contract. However, the “firm bid” must be accepted by the Government within the time stated in the offer section of the IFB.

Firm-Fixed Price (FFP) (Chapter 2)—A type of contract in which the price is fixed and is not subject to adjustment due to the contractor’s cost experience during contract performance.

Firm-Fixed Price-Indefinite-Delivery (FFP-ID) (Chapter 2)—A type of contract that provides for firm-fixed prices or fixed prices with economic price adjustment. Indefinite-delivery contracts are designed for use when the times or quantities of future deliverables are not known at the time of contract award.

Fixed Price with Economic Price Adjustment (FP-EPA) (Chapter 2)—A type of contract that is subject to adjustment due to labor or material cost changes and circumstances beyond the control of the contractor such as inflation as indicated by a recognized price index. Adjustments may be upward or downward within stated limitations.

Full and Open Competition (FAOC) (Chapter 2)—FAOC means that all responsible sources are permitted to compete.

General Accounting Office (GAO) (Chapter 9)—An agency of the Legislative branch of Government. The GAO, among other things, makes decisions on protests filed with it relative to any agency’s handling of IFBs. These decisions are referred to as Comptroller General Decisions because the Comptroller General is the head of the GAO.

General Services Administration Board of Contract Appeals (GSBCA) (Chapter 9)—The GSBCA, among other things, makes decisions on protests filed with it relative to an agency’s handling of IFBs for automatic data processing acquisitions.

GLOSSARY

Indefinite-Delivery (Chapter 2)—A type of contract used when the terms or quantities of future deliveries are not known at the time of contract award. There are three variations of indefinite-delivery contracts: 1) Definite-Quantity, 2) Requirements, and 3) Indefinite-Quantity.

Indefinite-Quantity (Chapter 2)—When used with reference to indefinite-delivery contracts, “indefinite-quantity” means that the contract provides for indefinite quantities, within stated limits, of specific supplies or services to be furnished during a fixed period of time. Deliveries are scheduled by placing specific orders under the contract.

Integrity (Chapter 7)—When used in connection with whether or not a prospective contractor meets the test of “responsibility” so as to receive a Government contract, integrity generally means honesty, decency, and uprightness.

Interested Party (Chapter 9)—An interested party, for the purpose of filing a protest, means an actual or prospective offeror whose direct economic interest could be affected by the award of a contract or by the failure to award a contract.

Invitation for Bids (Chapter 2)—Document used by the Government to solicit bids when a contract is to be entered into using sealed bidding procedures. It includes a description of the supplies or services to be delivered and lists or includes the applicable solicitation provisions and contract clauses.

Late Bid (Chapter 5)—To be considered, a bid must be received by the time set for opening of bids. A bid received after that time is a “late” bid and cannot be considered except under certain specified conditions.

List of Parties Excluded from Federal Procurement and Nonprocurement Programs (Chapter 7)—Unless there is compelling reason to do so, agencies shall not solicit offers from, award contracts to, or consent to subcontracts with, any company or firm named on any of the lists. The lists are compiled, maintained, and distributed by the General Services Administration and replace the previous list of “Debarred, Suspended, and Ineligible” contractors.

Minor Informality and Irregularity (Chapter 5)—A minor informality or irregularity in a bid is one that is a matter of form rather than substance.

Mistakes in Bids (Chapter 6)—“Mistakes in Bids” pertains to mistakes made by a bidder in preparation of a bid and which are not corrected or discovered before the opening of bids.

Notice of Cancellation (Chapter 4)—If a decision has been made to cancel an IFB, a notice of such cancellation must be sent to each prospective bidder that was provided with a copy of the IFB. The reason for cancellation is stated in the notice.

Numbered Notes (Chapter 3)—The first issue of the CBD each week lists current “Numbered Notes.” The notes provide information on how to respond to a synopsis; qualifications of prospective contractors; and other information. Each synopsis should incorporate, by reference, any applicable numbered note. The use of numbered notes saves space and provides uniformity.

OF 17 (Chapter 5)—“OF” means Optional Form. The OF 17 is a “Sealed Bid Label.” It is often included as part of a bid set. Bidders apply the label to the bid envelope so as to provide for ready identification and proper handling of bids.

OF 336 (Chapter 2)—“OF” means Optional Form. The OF 336 is the Continuation Sheet used to supplement the Standard Form 33 (Solicitation, Offer and Award) by providing a place to describe the required supplies or services (Section B of the Uniform Contract Format).

Office of Federal Contract Compliance Programs (OFCCP) (Chapter 7)—The OFCCP is a part of the U.S. Department of Labor. One of its functions is to monitor contractors’ compliance with equal employment opportunity laws.

Postmark (Chapter 5)—A printed, stamped, or otherwise placed impression that is readily identifiable as having been placed there by an employee of the U.S. or Canadian Postal Service. A postage meter machine impression is not an acceptable postmark for the purpose of making a “late bid” determination.

Postaward Notification (Chapter 8)—The notification made to the unsuccessful bidders that their bids were not accepted.

Pre-bid Conference (Chapter 4)—A meeting held by the Government before bid opening for the purpose of communicating to prospective bidders information that will enhance understanding the requirement.

Preaward Review Request (Chapter 7)—If a proposed contract is expected to total \$1 million or more, the CO shall process a preaward review request to the OFCCP for an equal employment opportunity (EEO) clearance of the prospective contractor. This rule also applies to subcontracts, basic ordering agreements, or when increasing the aggregate value of an existing contract to \$1 million or more.

Preaward Survey (Chapter 7)—An evaluation by a surveying activity of a prospective contractor’s capability to perform a proposed contract. Used when information on hand or readily available to the CO is not sufficient to determine the responsibility of a prospective contractor.

GLOSSARY

Preaward Survey Request (Chapter 7)—If the CO determines that a preaward survey is needed, he/she will request the appropriate activity to conduct the preaward survey.

Presolicitation Notice (Chapter 3)—A notice giving information relative to a proposed IFB before the IFB is issued. Prospective bidders use the information to determine whether or not they want to request the IFB when it is issued. Presolicitation notices are used: 1) when bid sets are large and expensive and distribution can be limited to only those prospective bidders who are definitely interested; 2) when publicizing long-range needs (before the actual IFBs) so that industry can be planning to respond or to identify additional sources; 3) when required in connection with construction contracts in excess of \$100,000.

Price Analysis (Chapter 5)—The process of examining and evaluating a bid price without evaluating the separate elements of cost and profit from which the price is derived. Price analysis includes comparing the various bid prices; comparing current bid prices with prices previously paid; and other price analysis techniques.

Price-Related Factor (Chapter 5)—A factor, other than the actual bid price, that will be considered in determining which bid will result in the lowest overall cost to the Government. Examples include costs of inspection, transportation, and the cost of making multiple awards. Any price-related factors must have been stated in the IFB.

Prompt Payment Discount (Chapter 5)—A discount offered by a contractor if the Government pays the contractor within a stated time after the contractor submits an invoice.

Protest (Chapter 9)—A written objection by an interested party to a solicitation by an agency for offers for a proposed contract for the acquisition of supplies or services, or a written objection by an interested party to a proposed award or the award of such a contract.

Public Bid Opening (Chapter 5)—Sealed bids submitted in response to an IFB are publicly opened at a specified time and place. The various bidders, other interested parties, the press, and the public in general may attend a bid opening.

Quantity Discounts (Chapter 5)—A discount offered by vendors to customers who purchase in large quantities.

Requirements (Chapter 2)—When used with reference to indefinite-delivery contracts, “requirements” means that the contract provides that all purchase requirements for specified supplies or services needed by designated Government activities for a specified period of time will be fulfilled by placing orders under that contract.

Responsibility (Chapter 7)—It is the policy of the Government that purchases shall be made from responsible contractors only. A responsible prospective contractor is one that meets standards specified in the FAR and/or the IFB.

SBA Central Office (Chapter 7)—The SBA Central Office is the headquarters of the SBA. If the CO disagrees with a decision of an SBA Regional Administrator relative to the issuance of a COC, the CO may appeal such decision to the SBA Central Office.

SBA Regional Administrator (Chapter 7)—The Small Business Administration has regional offices, each headed by a Regional Administrator. The SBA Regional Administrator makes decisions relative to the issuance of a COC.

SF 26 (Chapter 2)—"SF" means Standard Form. The SF 26, "Award/Contract," is used to award a contract if the lower portion ("Award") of the SF 33 is not used.

SF 30 (Chapter 4)—"SF" means Standard Form. The SF 30, "Amendment of Solicitation/Modification of Contract," is used to amend an IFB.

SF 33 (Chapter 2)—"SF" means Standard Form. The SF 33, "Solicitation, Offer, and Award," is used for soliciting offers when using either sealed bidding (IFB) or negotiation (RFP—Request for Proposals) procedures. As indicated by the title, the form is divided into three parts: 1) Solicitation, 2) Offer, and 3) Award.

SF 1403 (Chapter 7)—"SF" means Standard Form. The SF 1403, "Preaward Survey of Prospective Contractor (General)," is used by the CO to request a surveying activity to perform a preaward survey.

Small Business Administration (SBA) (Chapter 7)—The SBA is the executive agency, established by the Congress of the United States, to promote, advocate, and represent the interests of small business concerns as a means of contributing to the social and economic well being of the United States.

Solicitation Provisions (Chapter 2)—A term or condition used only in solicitations and that applies only before contract award.

Surveying Activity (Chapter 7)—The cognizant contract administration office or, if there is no such office, another organization designated by the agency to conduct preaward surveys.

Sustained (Chapter 9)—Sustained, when used relative to protests, means that the decision-making authority (e.g., GAO, GSBICA) finds in behalf of the protestor (a protest may be sustained or denied).

GLOSSARY

Synopsis (Chapter 3)—A condensed statement of an agency’s proposed contract action publicized in the Commerce Business Daily.

Synopsis Format (Chapter 3)—A synopsis must be prepared in a standard format. There are 17 items that must be included in the synopsis in the sequence prescribed.

Telecommunicated Synopsis (Chapter 3)—A synopsis that is forwarded to the Commerce Business Daily by electronic transmission.

Time Extension (Chapter 5)—If the Government is unable to award a contract within the bid acceptance period stated in the bids, the CO may request those bidders whose bids have not expired to extend the time for bid acceptance.

Uniform Contract Format (Chapter 2)—The UCF prescribes the format, in terms of sequencing, in which solicitations and contracts are to be assembled.

Verification (Chapter 6)—When used in connection with mistakes in bids, verification means the process by which the CO obtains from the bidder a confirmation as to whether the bid as submitted is the bid actually intended.

Walsh-Healey Public Contracts Act (Chapter 7)—An act that requires a prospective contractor to be a manufacturer or regular dealer in the supplies manufactured or used in performing the contract. Being such, the prospective contractor represents that it is in compliance with minimum wage, maximum hour, child labor, and other stipulations of the Act. The Act applies to contracts for furnishing materials, supplies, articles, and equipment with a value greater than \$10,000.

**APPENDIX D
ACRONYM LIST**

| <u>ACRONYM</u> | <u>DEFINITION</u> |
|-----------------------|--|
| ADP - | Automatic Data Processing |
| CBD - | Commerce Business Daily |
| CID - | Commercial Item Description |
| CO - | Contracting Officer |
| COC- | Certificate of Competency |
| Doc No. - | Document Number |
| DOL - | Department of Labor |
| EEO - | Equal Employment Opportunity |
| FAOC - | Full and Open Competition |
| FAR - | Federal Acquisition Regulation |
| FFP - | Firm-Fixed Price |
| FIPS - | Federal Information Processing Standard |
| FOB - | Free on Board or Freight on Board |
| FP-EPA - | Fixed Price with Economic Price Adjustment |
| FP-ID | Fixed Price - Indefinite Delivery |
| GAO - | General Accounting Office |
| GSA - | General Services Administration |
| GSBCA - | General Services Board of Contract Appeals |
| IFB - | Invitation for Bids |
| <u>ACRONYM</u> | <u>DEFINITION</u> |

ACRONYM LIST

| | |
|---------|---|
| IGCE - | Independent Government Cost Estimate |
| IPD - | Item Purchase Description |
| MIPR - | Military Interdepartmental Purchase Request |
| NSN - | National Stock Number |
| OF - | Optional Form |
| OFCCP - | Office of Federal Contract Compliance Program |
| OFPP - | Office of Federal Procurement Policy |
| OMB - | Office of Management and Budget |
| PALT - | Procurement Administrative Lead Time |
| PCR - | Procurement Center Representative |
| PR - | Purchase Request |
| QA - | Quality Assurance |
| RFP - | Request for Proposals |
| RFQ - | Request for Quotation |
| SBA - | Small Business Administration |
| SF - | Standard Form |
| SOW - | Statement of Work |
| UCF - | Uniform Contract Format |

APPENDIX E - INDEX OF COURSE TOPICS

| <u>TOPIC</u> | <u>SECTION</u> | <u>FAR REFERENCE</u> |
|---|-----------------------|-----------------------------|
| Abstracting Bids | 5.2.2 | |
| Affirmative Action for Handicapped Workers | 2.4.2.1 | 52.222-36 |
| Alleging Mistakes | 6.1.4 | |
| All or None Bids | 5.6.1.9 | |
| Amendments | Chapter 4 | |
| Amendments; issuing | 4.2.3 | 5.101(a)(2) |
| Amendments; preparation | 4.2.2 | |
| Authority to Answer Inquiries | 3.2.1 | |
| Availability to Perform | 7.3.2.4 | |
| Award Executions | 8.3.2, 8.5.2 | 14.707-1 |
| Awarding Contract | Chapter 8 | |
| Awarding Contract After COC Process has Begun | 7.5.2 | 19.602-4 |
| Awarding Contract with Protest Pending | 9.1.3 | |
| Award Recommendation | 8.2 | 1.602-1(a), 1.602-1(b) |
| Award Recommendation Accepted | 8.2.3 | |
| Award Recommendation Rejected | 8.2.2 | |
| Award Selection | 8.2 | 1.602-1(a), 1.602-1(b) |
| Bid Acceptance Periods | 5.3.2 | |
| Bid Opening Dates | 2.1 | |
| Bid Responsiveness | 5.5 | |

INDEX OF COURSE TOPICS

| <u>TOPIC</u> | <u>SECTION</u> | <u>FAR REFERENCE</u> |
|--|-----------------------|--|
| Bid Samples | 2.4.4.2 | 4.201-6(o), 52.214-40 |
| Brand Name or Equal | 2.4.1.3 | 10.004(b)(3) |
| Buy American Act | 5.6.1.5 | 25.1, 52.225-1, 52.225-3 |
| Buy-in Bids | 7.3.2.3 | 32.107, 3.501 |
| Cancelling; recording, synopsising | 4.3., 4.4.2 | |
| Cancelling IFB After Bid Opening | 4.4 | 14.404-1 |
| Cancelling IFB Before Bid Opening | 4.3 | |
| Capability to Perform | 7.3.2.2 | |
| Causes for Exclusion | 7.1 | 9.405-1, 9.406-2, 9.407-2 |
| Certificate of Competency; issuing | 7.5, 7.5.1 | 19.601(a), 19.602-1, 19.602-2, 19.602-3 |
| Certifications and Representations | 7.3.1 | |
| Changes Made or Requested By Bidder | 5.6.1.2 | 14.404 |
| Classified Bid Opening | 5.2.3 | |
| Clerical Mistakes | 6.1.1.1 | |
| CO Actions Concerning Small Business Responsibility | 7.5.1 | 19.602-1 |
| Commerce Business Daily | 3.1 | 5.201(b) |
| Commercial Item Description | 1.3.2 | 10.001 |
| Conditions for Use of Sealed Bidding | 1.4 | 6.401, 6.102 |
| Conditions for Negotiation | 5.6.4 | 14.404-1 |

| <u>TOPIC</u> | <u>SECTION</u> | <u>FAR REFERENCE</u> |
|---|-----------------------|-----------------------------------|
| Contract; preparing | 8.3 | 14.204 |
| Contract Clauses | 2.4.2.1 | 52.1 |
| Contract Distribution | 8.6.1 | 4.2 |
| Contract Types | 2.2 | |
| Contractor Integrity | 7.3.2.5 | |
| Correcting Mistakes | 6.1.5, 6.1.6.1 | 14.406-3 |
| Data that Bear on the Issue of Responsibility | 7.2 | |
| Decision to Amend or Cancel | 4.1 | |
| Definite Quantity Contracts | 2.2.3.1 | 16.502 |
| Descriptive Literature | 2.4.4.2 | 14.206(p), 52.214-21 |
| Determining Responsibility | 7.3 | |
| Deviations form FAR | 2.4.5.10 | 1.4 |
| Document File; preaward inquiries | 3.2.6 | |
| Document File; postaward mistakes | 6.2.5 | 14.406-4 |
| Document File; award | 8.4 | 14.103-2, 14.407-7 |
| Economic Price Adjustment | 5.6.1.7 | |
| EEO Clearances | 7.6 | 22.805(a) |
| Equal Bids; tie-breaking | 5.6.5 | 14.407-6 |
| Evaluating Bid Prices | 5.6.2 | 14.201-8, 52.214-10, 52.214-22 |
| Evidence Needed for Processing Alleged Mistakes | 6.2.2 | |

INDEX OF COURSE TOPICS

| <u>TOPIC</u> | <u>SECTION</u> | <u>FAR REFERENCE</u> |
|--|-----------------------|-----------------------------|
| Exceptions to the UCF | 2.3.1 | 14.201-1(a) |
| Experience Qualifications | 2.4.1.8 | |
| Factfinding | 3.2.4 | |
| Fair and Reasonable Prices | 5.6.2 | |
| Federal, State, and Local Taxes | 5.6.1.4 | 29.201, 52.229-3 |
| Financial Ability | 7.3.2.3 | 32.107, 3.501 |
| Findings of Fact; preparing | 9.1.2 | |
| Firm-Bid Rule | 5.3.1 | 52.214-15, 52.214-16 |
| Firm-Fixed Price Contract | 2.2.1 | 16.202-2 |
| Firm-Fixed Price Indefinite-Delivery | 2.2.3 | 16.5 |
| Fixed Price with Economic Price Adjustment | 2.2.2 | 16.203-2, 16.203-4(d)(l) |
| Foreseeable Costs or Delays | 5.6.1.1 | |
| Freedom of Information Act (Policy) | 5.2.2 | 24.202(b) |
| Full and Open Competition | 1.3.3 | 10.001 |
| General Standard for Responsibility | 7.3.2 | 9.104-1 |
| Indefinite-Quantity Contracts | 2.2.3.3 | 16.504 |
| Information Given to Bidder Concerning Award | 8.6.2 | 14.408-1 |
| Information Not to be Released | 3.2.2 | 14.404-4, 9.105-3 |
| Inquiries; written or verbal | 3.2.3 | |
| Instructions to Bidders Who Allege Mistakes | 6.1.4 | |

| <u>TOPIC</u> | <u>SECTION</u> | <u>FAR REFERENCE</u> |
|---------------------------------------|-----------------------|--|
| Insufficient Funds | 8.1.1 | |
| Invitation for Bids | 1.3.1, Chap. 2 | |
| Invitation for Bids; issuing | 3.1.5 | 14.205 |
| Invitation for Bids; number of copies | 3.1.5.1 | 36.211, 5.102 |
| Invitation for Bids; Section A | 2.4.1.1 | |
| Invitation for Bids; Section B | 2.4.1.2 | |
| Invitation for Bids; Section C | 2.4.1.3 | 10.002, 10.004(b)(3) |
| Invitation for Bids; Section D | 2.4.1.4 | 10.004(e) |
| Invitation for Bids; Section E | 2.4.1.5 | 46.2, 46.3 |
| Invitation for Bids; Section F | 2.4.1.6 | 12.1 |
| Invitation for Bids; Section G | 2.4.1.7 | |
| Invitation for Bids; Section H | 2.4.1.8 | |
| Invitation for Bids; Section I | 2.4.2.1 | 52.232-25, 52.232-26 |
| Invitation for Bids; Section J | 2.4.3.1 | |
| Invitation for Bids; Section K | 2.4.4.1 | 52.3 |
| Invitation for Bids; Section L | 2.4.4.2 | 14.201-6(o)-(p), 52.214-21, 52.214-40 |
| Invitation for Bids; Section M | 2.4.4.3 | |
| Item 17 — Description | 3.1.2.2, 3.1.2.4 | 5.207(c), 5.3 |
| Late Bids | 5.4 | 14.304-1, 14.304-3, 14.304-4 |

INDEX OF COURSE TOPICS

| <u>TOPIC</u> | <u>SECTION</u> | <u>FAR REFERENCE</u> |
|---|-----------------------|-----------------------------|
| Legal Review for Award | 8.5.1 | 4.1 |
| Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs | 7.1 | 9.405-1, 9.406-2, 9.407-2 |
| Minor Informalities and Irregularities | 5.5.2 | 14.405 |
| Mistakes in Bids; postaward | 6.2 | 14.406-4 |
| Mistakes in Bids; preaward | 6.1 | 14.303(a), 52.214-5 |
| Mistakes in the Government's Favor | 6.2.1 | |
| Mistakes; other than clerical | 6.1.1.2 | |
| Mistakes on the Face of the Bid; postaward | 6.2.1 | |
| Modifications of Bids | 5.1.3 | |
| Multiple Awards | 5.6.1.3, 8.3.1 | |
| Mutual Mistake | 6.2.1 | |
| Negotiation; preparing for | 5.6.4 | 15.103 |
| Nonresponsive Bids; examples | 5.5.1 | 14.404-2, 28.101-4 |
| Nonresponsive Bids; rejection of | 5.5.3 | |
| Notice of Cancellation | 4.3.1, 4.4.2 | |
| Notifications; postaward | 8.6.2 | 14.408-1 |
| Notify Parties Concerning Award | 8.6 | 4.2 |
| Numbered Notes | 3.1.2.3 | |
| Obtain Approvals for Award | 8.5 | |
| Obtaining Approvals for IFB | 2.5 | 19.505 |

| <u>TOPIC</u> | <u>SECTION</u> | <u>FAR REFERENCE</u> |
|---|-----------------------|-----------------------------|
| Opening Bids by Mistake | 5.1.1 | |
| Opening of Bids | 5.2, 5.2.1 | |
| Optional Form 17 | 5.1.1 | 14.202-3(b) |
| Optional Form 336 | 2.4.1.2 | |
| Parent or Predecessor Companies; performance of | 7.3.2.1 | |
| Past Performance | 7.3.2.1 | |
| Postponing the Bid Opening Date | 4.2.1, 5.1.4 | 5.101(a)(2) 15.409 |
| Pre-bid Conferences | 4.1.2 | 15.409 |
| Preaward Inquiries | 3.2 | |
| Preaward Surveys; requests | 7.4, 7.4.1 | 9.106-2 |
| Preaward Surveys; reviewing report | 7.4.3 | |
| Presolicitation Notices | 3.2.1.1 | 14.205, 36.302 |
| Price Analysis | 5.6.3 | 15.805-2 |
| Price-Related Factors | 5.6.1 | 14.201-8 |
| Problems with IFBs | 4.1.1, 4.1.3 | |
| Procurement Planning | 1.2 | |
| Prompt Payment Act | 2.4.2.1 | 52.232-25 |
| Protest | Chapter 9 | 33.101 |
| Protest; denying or sustaining | 9.1.4, 9.1.5 | |
| Protest; filed with agency | 9.1 | |

INDEX OF COURSE TOPICS

| <u>TOPIC</u> | <u>SECTION</u> | <u>FAR REFERENCE</u> |
|---|-----------------------|-----------------------------|
| | 9.3.3 | |
| Protest; more than one bidder | 9.2 | 19.301(d), 19.302 |
| Protest; Small Business Representation | 9.3 | 22.608-2(b), 22.608-3 |
| Protest; Walsh-Healey | 9.1.3 | |
| Protests Action Pending a Decision | 9.4 | 33.104 |
| Protests to GAO | 9.5 | 33.105 |
| Protests to GSBCA and to Courts | 3.2.5 | |
| Providing Responses | 5.2.1 | |
| Public Bid Opening | 3.1.3 | 5.203(a)-(d), (f) |
| Publicizing IFBs | 3.1.4 | 5.101(a)(2), 5.5 |
| Publicizing an IFB; other than synopsis | 3.1.4.1 | |
| Publicizing IFBs; implementing other methods | 1.2, 1.3.1 | |
| Purchase Requests | 7.3.1 | 19.302, 19.705-4(b) |
| Qualified and Eligible Bidders | 7.3.1.1 | 22.606-2 |
| Qualifying as a Regular Dealer | 7.3.1.1 | 22.606-1 |
| Qualifying as a Manufacturer | 5.6.1.8 | |
| Quantity Discounts; cumulative and non-cumulative | 5.1 | |
| Receive Bids | 6.1.1 | |
| Recognizing Mistakes; preaward | 6.2.4 | |
| Reform the Contract | 5.6.4 | |
| Rejecting All Bids | | |

| <u>TOPIC</u> | <u>SECTION</u> | <u>FAR REFERENCE</u> |
|--|-----------------------|---|
| Releasing Information | 3.2.1 | 14.205-4(c), 14.211(a), 14.211(b), 24.2 |
| Requirements Contracts | 2.2.3.2 | 16.503 |
| Rescinding a Contract | 6.2.4 | |
| Responding to Complaints; Protests | 9.1.1, 9.1.6 | |
| Responsibility | Chapter 7 | 9.103, 9.104, 9.103(c) |
| SBA Actions Concerning a Case of Nonresponsibility | 7.5.1 | 19.602-2 |
| SBA Regional Administrator Decisions; responsibility | 7.5.1 | |
| Secure Bids | 5.1.1 | 14.202-3(b) |
| Site Visits | 4.1.2 | |
| Small Business; responsibility | 7.5 | 19.601(a) |
| Solicitation Mailing Lists | 1.3.3 | Part 6 |
| Solicitation Provisions | 2.4.5 | 52.101(a) |
| Sources of Data | 7.2.2 | |
| Special Standards | 7.3.3 | |
| Specifications | 1.3.2 | 10.001 |
| Standard Form 26 | 8.3.2 | |
| Standard Form 30 | 4.2.2 | |
| Standard Form 33 | 2.4.1 | |
| Standard Form 33; award portion only | 8.3.2 | 14.407-1 |

INDEX OF COURSE TOPICS

| <u>TOPIC</u> | <u>SECTION</u> | <u>FAR REFERENCE</u> |
|---------------------------------|-----------------------|---|
| Standard Form 1403 | 7.4.2 | |
| Standard Form 1409 | 5.2.3 | |
| Subcontractor Responsibility | 7.3.4 | 9.104-4 |
| Sufficiency of Funding | 8.1 | |
| Suspecting Mistakes | 6.1.2 | |
| Synopsis; contract awards | 8.6.2.1 | 5.301(b) |
| Synopsis; Exceptions | 3.1.1 | 5.202, 5.202(a)(2), 5.203(a)-(f) |
| Synopsis; forwarding | 3.1.3 | |
| Synopsis; preparation | 3.1.2 | 5.207 |
| Synopsis; purpose | 3.1 | 5.201(b) |
| Synopsis; telecommunicating | 3.1.2 | 5.207 |
| Synopsis; time requirements | 3.1.3.1 | 5.203(a)-(c), (f) |
| Synopsis Format; seventeen-item | 3.1.2.1 | 5.207(c) |
| Telegraphic Bids | 5.1.2 | 52.214-5(b), 52.214- 13, 14.202-2 |
| Time Extensions | 5.3, 5.3.2 | |
| Two-Step Sealed Bidding | Appendix B | 5.101(a), 5.206(a)(2), 14.201-6(p) 14.201- 6(r)-(t), 14.203-1, 15.102, 15.412, 15.413 |
| Uniform Contract Format | 2.3 | 14.201-1 |

| <u>TOPIC</u> | <u>SECTION</u> | <u>FAR REFERENCE</u> |
|-------------------------------------|--------------------------|---|
| Verifying Mistakes | 6.1.1.1, 6.1.2, 6.1.3 | 14.406-1 |
| Walsh-Healey Public Contracts Act | 7.3.1.1 | 22.602, 22.604, 22.606-1, 22.606-2, 22.608(f) |
| Withdrawals of Bids | 5.1.3 | 14.303 |
| Withholding Award Pending a Protest | 9.1.3 | |